

S. Hrg. 109-327

**NOMINATIONS OF STEWART A. BAKER AND JULIE
L. MYERS**

HEARING

BEFORE THE

**COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF STEWART A. BAKER TO BE ASSISTANT SECRETARY
FOR POLICY, DEPARTMENT OF HOMELAND SECURITY, AND JULIE L.
MYERS TO BE ASSISTANT SECRETARY FOR U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

SEPTEMBER 15, 2005

Printed for the use of the
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

24-237 PDF

WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

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NOMINATIONS OF STEWART A. BAKER AND JULIE L. MYERS

THURSDAY, SEPTEMBER 15, 2005

**U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
*Washington, DC.***

The Committee met, pursuant to notice, at 10:36 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Voinovich, Warner, Lieberman, Levin, and Lautenberg.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

Good morning. Today the Committee will consider the nominations of two individuals to fill key positions at the Department of Homeland Security: Stewart Baker to be Assistant Secretary for Policy; and Julie Myers to be Assistant Secretary for Immigration and Customs Enforcement.

I know that both nominees are very honored to have with them today two of our current colleagues and one of our former colleagues to introduce them. I also know that those who are undertaking that duty are on very tight schedules. So what I am going to do is call on our colleagues for their introductions so that they can go on with their day, and then we will resume our opening statements and proceed with the hearing.

We very much appreciate that the distinguished Senator from Arizona, Senator John McCain, is here, and I will call on him first to introduce Mr. Baker.

STATEMENT OF HON. JOHN McCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you very much, Your Majesty—I mean Madam Chairman.

I am glad to be here, given the bitter partisanship that exists on this Committee between you and Senator Lieberman, I am pleased to act as mediator here today at this hearing.

Chairman COLLINS. I think I will resume my opening statement after all.

Senator LIEBERMAN. I do want to say for the record that I did say to Mr. Baker a moment or two ago that until I learned that you were introducing him, Senator McCain, his nomination looked like it was going to sail through.

Senator McCAIN. I thank you both, and I am very pleased and proud to be here with our colleague, Senator Chuck Robb, who served in the most distinguished fashion, along with Judge Silberman, on the Commission on Weapons of Mass Destruction. I believe that Commission did an admirable job and provided this Nation with much needed information and recommendations as to how we can improve our intelligence capabilities to a point where Americans can regain confidence in it. I was very pleased to serve under the chairmanship of Senator Robb.

I am really here today not only because I have known Stewart Baker for a long time, but because of the outstanding job that he did on the Weapons of Mass Destruction Commission. He staffed it with ability, making use of his extensive background on national security issues. Before that he served as the General Counsel for the National Security Agency.

As my colleagues all know, who have served on commissions, the most important aspect of it is valuable use of the commission's time. I believe that Stewart provided us with both the kind of witnesses, information, and background that was necessary for us to be able to make informed conclusions.

I believe he will do a superb job in the Department of Homeland Security. Obviously, there is going to be some significant review and scrutiny of the Department of Homeland Security. I think he will serve with distinction. I am very proud to join my friend, Chuck Robb, here today in strongly recommending him.

I thank the Committee for their courtesy in allowing me to be here to introduce him.

Chairman COLLINS. Thank you, Senator.

Senator Robb, welcome back to the Senate. We are very pleased to have you here today. Please proceed with your remarks.

**STATEMENT OF HON. CHARLES S. ROBB, FORMER U.S.
SENATOR FROM THE STATE OF VIRGINIA**

Senator ROBB. Thank you, Madam Chairman and Senator Lieberman, and my friend and colleague and the Chairman of the Armed Services Committee, Senator Warner, and other Committee Members as they arrive or will read in detail every word that is uttered in this particular hearing to ensure that none but the finest serve our government in these critical capacities.

I am delighted to be able to join my longtime friend and former colleague, John McCain. I must thank him. Normally when we are together, there is something that is derogatory about the Navy/Marine Corps team in which I end up being less flattering than I was just a minute ago by the distinguished Senator from Arizona.

I must say that Senator Warner, as you know, does not ever have that problem. He is, I think, the only Member of this body that served in both of those branches of the service. So I am delighted to be here before you.

I am particularly pleased to join you in formally introducing and wholeheartedly recommending Stewart Baker for this position with the Department of Homeland Security. As Senator McCain just mentioned, we had the opportunity to work with Stewart for the better part of a year-and-a-half in putting together the report that was the result of a very serious effort by some very talented people.

And we needed a quarterback for the wordsmithing. In particular, we needed somebody that could bring together a group of extraordinarily talented young lawyers and others who were going to help us pull this document together.

Senator Voinovich, good to see you, sir.

We sought a number of recommendations for who we might ask to serve as general counsel. Everyone that we talked to had a number of recommendations, but if you could get Stewart Baker, it is really going to be a real plus.

And until that time, I had only known Stewart Baker by reputation. But what a reputation. He proved that time and again during his service with us. He was able to reconcile disparate views that came up from time to time as to either whatever findings we might make or particularly whatever recommendations in terms of going forward. And his leadership of the drafting team to put together the report that was delivered to the President and to Members of Congress was superb.

I would just simply say that I have known many of the people in this town, which has an overabundance of over achievers. And even in that distinguished group, Stewart Baker has always stood out. And he continued to excel in the work that he did for us.

Senator McCain alluded to just a few of the roles that Stewart Baker has played over the years in providing leadership for a whole variety of national security interests. I do not think anyone would take issue with the need at this time for really first-rate individuals in providing leadership for the Department of Homeland Security.

The President has nominated someone that I believe, and I think all of those, and there are several people who worked with and for Stewart Baker, who are sitting behind us today, would all agree provided the kind of leadership, the kind of direction, and is so articulate, so eloquent that I am absolutely certain that he will serve yet again his country with distinction in a very challenging time, in a very challenging role.

I will simply conclude by saying thank you for allowing me to come back for this privilege. And I hope it will be the privilege of the entire Committee to recommend Stewart Baker to the full Senate for confirmation so he can get on the job. It is clear we have work to do in that area.

Thank you, Madam Chairman and Members of the Committee.

Chairman COLLINS. Thank you very much.

Senator ROBB. Senator Levin and Senator Lautenberg, you just arrived. I am delighted to see all of you as former colleagues and remaining friends.

Chairman COLLINS. Thank you, Senator Robb. Your endorsement and that of Senator McCain means a lot to this Committee.

We would be happy to excuse you both now if you would like and thank you for taking the time to be here today.

Senator WARNER. Madam Chairman, before they depart, may I associate myself with the remarks by Senator McCain about Senator Robb's work on this Commission. We were strong partners on a team in the years that he served here in the Senate. That will always be the case.

Thank you for coming up on behalf of such a distinguished, well-accomplished nominee.

Chairman COLLINS. Thank you, Senator.

Senator ROBB. Madam Chairman, I thank the distinguished Senator from Virginia. And with that I will depart and leave you to his tender mercies.

Senator ROBERTS. Do you mean before I make my statement? Is my fellow Marine going to leave me?

Senator ROBB. Madam Chairman, I am not going to depart until my former Marine over here makes his statement.

Chairman COLLINS. Senator Roberts, we are very pleased to have you with us today, the distinguished Chairman of the Senate Intelligence Committee.

**STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR FROM
THE STATE OF KANSAS**

Senator ROBERTS. Actually, that is classified, Madam Chairman.

I do not know how to top John McCain in addressing you. I do not know how to top John McCain period. I thought maybe exalted leader and protector of western civilization.

Chairman COLLINS. That would be adequate.

Senator ROBERTS. I appreciate that. Senator Lieberman and my distinguished Chairman of the Armed Services Committee, Senator Levin, the Inspector General of the entire government, and Senator Lautenberg, I am honored to be here today to introduce a fellow Kansan whom the President has nominated to be the Assistant Secretary of Homeland Security for the Bureau of Immigration and Customs Enforcement. That used to be INS, it is now called ICE. We do a lot in changing the acronyms around here, but we do not want to break the ICE but we sure want to fix it.

Julie Myers is a native of Shawnee, Kansas. She received her Bachelor of Arts degree from Baylor University in Texas and her law degree from the law school at Cornell.

Ms. Myers served as the Assistant Secretary for Export Enforcement at the Department of Commerce. As Assistant Secretary she did develop and coordinate the Department's efforts to prevent sanctions violations of U.S. dual-use export control laws and the anti-boycott provision of the Export Administration Act. No easy task.

She managed special agents throughout the country and she oversaw the Export Enforcement's International Attaché Program.

Ms. Myers served as the Chief of Staff of the Criminal Division for Assistant Attorney General Michael Chertoff at the Department of Justice, and as the Deputy Assistant Secretary for Money Laundering and Financial Crimes at the Department of Treasury. There she fought against the financiers of terrorism and implemented a national strategy to combat money laundering.

She also served as an Assistant U.S. Attorney in the Eastern District of New York, where she prosecuted financial criminals, and as a deputy to Independent Counsel Kenneth Starr.

Madam Chairman, my observation is that Kansas has been the home of a great many public servants, especially in law enforcement. Who can forget the legends of Wyatt Earp and Bat Masterson in my hometown of Dodge City. Their efforts really

helped clean up my hometown and the rest of Kansas. I knew Wyatt Earp and Bat Masterson, and Julie could ride shotgun with these guys anytime. I am sure that she, armed with her knowledge and passion for our judicial system, will enforce immigration and customs laws and policies with a firm and fair hand.

I think it is a privilege for me to sit by this young lady. She is getting married the day after tomorrow, so I am very hopeful we can expedite her confirmation and get her and John to the church on time.

Thank you, ma'am.

Chairman COLLINS. Thank you, Senator. Your endorsement means a great deal to this committee.

I know that you have an extremely busy schedule, so if you need to leave right now, and take Senator Robb with you, that would be acceptable to this Committee.

Senator ROBERTS. Thank you very much.

Chairman COLLINS. We are now going to resume opening statements.

Secretary Chertoff has said that the Department of Homeland Security was not created merely to be a big tent under which a lot of different organizations would be collected. It was created to put together a dynamic organization that would pursue missions in furtherance of homeland security and that would bring together all levels of government in order to execute those missions in an integrated and comprehensive manner. This Committee envisioned precisely that type of multi-jurisdictional integration when it created the Department of Homeland Security.

We have just observed the fourth anniversary of the event that led us to undertake such a profound reorganization of government.

Yet over the last two weeks we have seen a significant failure in the emergency preparedness and response system that the Department was supposed to strengthen. Hurricane Katrina was a natural disaster, but the devastation, suffering, and deprivation this powerful storm left in its wake was compounded by the failure of all levels of government—local, State, and Federal—to prepare and respond in a unified, integrated way.

Two months ago, Secretary Chertoff released the Department's Second Stage Review, a document that seeks to refine and reconfigure the Department in light of what has been learned during its first 2 years of operations.

Among the changes proposed by the Secretary is the creation of a Directorate of Planning and Policy. The intent of this new directorate would be to develop a more comprehensive approach to policy and planning, and to bring the various components of DHS, as well as its local and state partners, together under a unified vision.

I support the establishment of this office as the focal point of policy planning within the Department. I think the Department's recent handling of Hurricane Katrina indicates that need for more coordination, both within the Department and also with its State and local partners.

As Assistant Secretary for Policy, Mr. Baker would be directly responsible for establishing priorities and for seeing that they are implemented on a wide range of homeland security issues. This is obviously a considerable challenge for a department as large and

wide-ranging as the Department of Homeland Security, and Mr. Baker brings strong credentials to the task.

As has been indicated, he recently served as the General Counsel of the Commission on Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, where he headed the drafting team for the Commission's report. He served formerly as the General Counsel of the National Security Agency and as the Deputy General Counsel of the Department of Education.

Earlier in his career, Mr. Baker served as a law clerk to Justice John Paul Stevens.

I am pleased to note that Mr. Baker lived in Portland, Maine, while clerking for the esteemed Maine jurist, Judge Frank Coffin.

Nothing is more crucial to the safety of the American people, our economy, and the principles upon which our Nation stands than the borders that are closed to our enemies yet open to our friends. The United States has some 6,000 miles of international border, some 600 of which are in my home state of Maine. I know full well both the vulnerability that these vast borders present and their importance to commerce and to our society.

Effective immigration and customs enforcement is essential if this balance among protection, commerce and values is to be struck. The State, local and Federal partnership we envision also is essential. When we speak of DHS components that have new and challenging homeland security missions to carry out in addition to vital traditional missions, and that we must forge a real partnership with State and local authorities, ICE comes immediately to mind.

From fraudulent identification to illegal immigration, from cargo container security to trade in counterfeit consumer goods to finance terrorism, this Committee has investigated and examined many of these new challenges.

In addition to ICE's responsibility for enforcement of Federal immigration and customs laws, its expanded mission includes the prevention of acts of terrorism by targeting the people, money, and materials that support terrorist activities. ICE actively seeks to combat drug trafficking, human smuggling, and international trade in child pornography, as well as terrorism. That ICE is the largest investigative arm of the Department is evidence of the scope and importance of its broad mission.

Julie Myers would bring experience and the confidence of Secretary Chertoff to this mission. She has served as an Assistant Secretary of Commerce for Export Enforcement, as the Deputy Assistant Secretary for Money Laundering and Financial Crimes at the Department of Treasury, and also worked as an Assistant U.S. Attorney in the Eastern District of New York.

Like Mr. Baker, Ms. Myers comes before this Committee at a time when the position she seeks may be on the brink of a substantial change. As part of the Second Stage Review, Secretary Chertoff has also proposed breaking up the Border and Transportation Security Directorate and splitting ICE and Customs and Border Protection into two independent units that will report directly to the Secretary. I would be interested in hearing Ms. Myers' thoughts on this proposed reorganization.

I want to thank both of the nominees for their past service to their country and for their willingness to continue to serve in very challenging capacities. I look forward to questioning them today.

Senator Lieberman.

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thanks very much very, Madam Chairman. I join you in welcoming Stewart Baker and Julie Myers to the hearing today.

This Committee authored the original legislation to create the Department of Homeland Security, so we have a real and personal interest in seeing the Department realize its full potential. Both of the positions for which you have both been nominated present great opportunities and great challenges. I would like to briefly touch on a few of the concerns that I have about issues facing both of these offices.

First to Mr. Baker. When we created DHS, one of the guiding principles was to bring greater cohesion to Federal homeland security missions that were then splintered among many different agencies. I have been thinking in the days since the unsatisfactory performance post-Hurricane Katrina, as people are beginning to pick the Department apart, that we ought to remind people why we created the Department. It is because there was disorganization before.

And the reaction to what seems to have been an inadequate performance is not to go back to disorganization. It is to fix the organization, I think, to make it work better.

In the early years of the Department clearly, and in some ways understandably, the initial goal of bringing all of those disparate missions together has not been fully realized, not realized as we had hoped. The Secretary has lacked the central staff and structure to chart Department-wide strategy and policy, which could then be carried out in a coordinated way by the many components of the Department.

This shortcoming has come to the forefront in a number of recent examinations of the Department, including an oversight hearing that we, in this Committee, held in January of this year.

Now Secretary Chertoff, in conducting his own internal review of the Department, has concluded that the Department needs a central policy shop. Mr. Baker, of course, has been nominated to lead that office for the entire Department. Ultimately we know Secretary Chertoff seeks legislation to elevate the office to become an under secretary for policy, overseeing not only the immediate office but also offices for international affairs, strategic planning, private sector, immigration statistics, as well as a new coordinator for asylum and refugee issues.

I believe the creation of a central policy office is a real step forward, and certainly a step toward setting clear priorities for the Department and realizing some of the potential we envisioned when we created the Department.

The Department again, perhaps understandably, in its early months has often been driven by the crisis of the day. It is essential therefore for this Department particularly to build a long-term strategic planning capability and to develop policies that will set

clear enforceable priorities for many of the components of our homeland security effort.

That effort will transcend any one purpose or office at the Department of Homeland Security. But the new policy office will, I think, be an essential core element to our building those capacities.

I have some questions about some of the details of the proposed new policy, and I am concerned that the Administration has not proposed adequate staffing for the new office that Mr. Baker would hold, given the breadth of issues that it must address. I am thinking particularly in the area of immigration policy. I will take the liberty to ask some questions of Mr. Baker on that.

For Ms. Myers, the Bureau of Immigration and Customs Enforcement, ICE, is a vitally important agency with a daunting combination of missions. The defense of this Nation from terrorist attacks should be the highest priority and the Agency's Immigration and Customs investigators have an important role to play in cracking down on human smuggling and money laundering activities that benefit the terrorists.

ICE was created again through an internal reorganization after the new Department itself was established. The new Agency required integrating the missions and cultures of what were once core customs programs at Treasury and core immigration programs at INS. The Agency, I think by most accounts, has gotten off to a rough start, in part because planning errors led to big budget shortfalls for its operations.

While we have been given assurances that these management issues are being resolved, I do want to note that the concerns still abound, including I must say, among some employees of ICE who believe that the current structure is hampering their ability to do their work.

Indeed, as you probably know, Ms. Myers, there is an active debate as to whether the decision to split ICE from Customs and Border Patrol is fundamentally flawed and ICE should now be recombined with Border Protection.

Although Secretary Chertoff did not recommend that as part of the Second Stage Review, I understand this is not necessarily a closed issue within the Department, and I want to say to you that it is not a closed issue either with Members of the Committee or Congress, including myself.

The Homeland Security Act requires that the Assistant Secretary for this post have a minimum of 5 years of professional experience in law enforcement and 5 years of management experience, both being important, as you can tell from what you know and what I have said.

You bring to this nomination a very impressive record. You are a very accomplished individual. I do want to say to you that I am going to ask you about your management experience and ask you to make the case for why you believe you satisfy the requirement of the 5 years of management experience that is uniquely required by statute for this position.

I want to say just a final brief word, and I am not going to go until the length that I have in my statement because I have gone on long enough. ICE is responsible for, as you know, apprehending

undocumented immigrants, detaining and deporting them. This is a very critical and difficult mission, also requiring priority setting.

ICE has tried to focus its enforcement resources on detaining high priority aliens such as criminal offenders and those who work at sensitive facilities like airports or nuclear power plants. There are approximately 10 million undocumented immigrants in the country and 18,000 detention beds. Clearly, we have got to utilize those beds for those who pose the greatest risk to the community and the highest probability of flight.

For many of the other individuals who are apprehended and who must await a hearing before an immigration judge, I believe we should utilize supervised release programs as alternatives to detention.

The final point I made in the meeting I had with you, the Commission on International Religious Freedom, on which I was pleased to play a part along with our former colleague Don Nickles in creating, put out a report earlier this year that was very critical of our handling, the government's handling, this section's handling, of those who seek asylum in this country based on religious bigotry, or worse torture, in the countries from which they come.

And I hope that if you are confirmed for this position that you will take a close look at that and see if you cannot do what we promise, including on the base of the Statue of Liberty, to welcome those who seek asylum for exactly those reasons in this country of liberty.

Thank you very much. I look forward to the questioning.

Chairman COLLINS. Thank you.

Do any of my colleagues have comments they would like to make? We were not clear about that in informing your staffs, so if someone does have some opening remarks, I would call on them to make their remarks at this time.

Senator WARNER. Madam Chairman, if I could just exercise a few minutes?

Chairman COLLINS. Senator Warner.

OPENING STATEMENT OF SENATOR WARNER

Senator WARNER. First, I want to say that these two individuals come before this Committee and the Senate as a whole with extraordinary credentials of achievement. It is a great credit to the Administration to continue to attract people of this standing to continue public service and participate in it.

Also Judge Chertoff, I call him judge because I was a law clerk to a circuit judge like you were, Mr. Baker, in my lifetime, both of you. And I have high regard for him. And I would hope that as we look at this new Agency, largely created here in this Committee by these two distinguished leaders that preside over the Committee today, we may do the fine-tuning here and there. But I would be hesitant to try and do a major dismantling of it at this time, is my thought on it.

But Mr. Baker, looking back over your credentials, I would urge that one of your first priorities be to look at the control of the expenditures and the accountability of the expenditures. We are really without precedent, the amount of money that has been appro-

priated. It is going, I guess, primarily to FEMA, but other institutions in there.

Do watch that because that will undermine the credibility of the future of the Agency faster than anything else with regard to Congress.

To you, Ms. Myers, what a marvelous career. I had a burst of exceptional service at a young age, but you do not worry about it a bit. As a former U.S. Assistant Attorney, I would like to take your case if there is any question about the manager in which you have achieved. I bet we can meet that 5-year statute.

Good luck to both of you. I thank the Chairman and the Ranking Member.

Chairman COLLINS. Thank you, Senator. Are there any additional statements?

Senator LAUTENBERG. Just a quick comment.

Chairman COLLINS. Senator Lautenberg.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Madam Chairman, with all of the laudatory comments made about these two individuals, my presumption is that you will be confirmed and that we will have a chance to ask a few questions that will challenge—sorry, it is not pointing the right way. And I come out of the technology business.

But I do want to say that I am pleased that we are taking a look toward the inside of the Department in each of your respective or prospective assignments.

And I think that it is fair to say that while marvelous work was done to get this Department established, and I commend Chairman Collins and Senator Lieberman for the pressure they put on all of us and Members of the Committee to get the job done. It was done hurriedly, not wastefully, I believe.

However, I think it is fair to say that a transaction as complicated as the creation of this Department will still have—I will call it a gestation period—for some time. Part of what creates legislation and change here is reaction to things in the past and what happened and where did something go awry. To see a resignation by the head of a major agency in the midst of crisis has us kind of—has me anyway, sitting back and taking a look and say hey, why did this happen?

Though the individual, Mr. Brown, was vetted by this Committee and I think took a pretty good look at his career and his qualifications, nevertheless it seems that he was over his head.

And I am not sure that keeping the head above water in this case is actually an attainable condition. Because when you—and I will use the term loosely—crash together so many departments, so many people, so many assignments, so many variables in the world in which we are living—we are beginning to discover that more and more—that I think that we will be taking and continue to take long looks at what the Department is going to finally look like.

I commend the decision to create a policy position and to get the ICE position squared away. In my mind, it raises kind of a generic question. At what point does DHS have law enforcement, the enforcement arm of the Department, in the appropriate house to get that done? Because these assignments can often be given out to

other departments that have a little narrower but more manageable—I found in my business experience that smaller units were always more efficient and more effective.

So we will watch with interest. And I think that in your case, each of you will be part of not only better management but also create policy, opportunities to engage in policy decision and make recommendations from your respective perches, if I can use the term, to make recommendations as to what you think might help us run this giant department more efficiently.

I thank you, Madam Chairman.

Chairman COLLINS. Thank you, Senator. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Madam Chairman, for holding this hearing today and considering these two nominees for positions in the Department of Homeland Security.

Ms. Myers and Mr. Baker, I would like to thank you both for your service and your willingness to continue serving in appointed positions. I recognize the sacrifice that you and your families have made. If there are family members present, I want to thank them for their sacrifice so that you can serve.

Madam Chairman, the events of the last several weeks dramatically highlight the need to have highly competent men and women in the senior positions of our government. They must be leaders with top-notch experience, managers with good interpersonal skills including having keen judgment, and individuals with policy expertise in the areas in which they will be working.

These two nominees also have an additional challenge. The Department of Homeland Security is still trying to come together as a cohesive entity 2 years after its establishment. The new Secretary recognizes that and has established his recommendations for the Second Stage Review.

He has recommended a policy office. Mr. Baker, you have been nominated to lead this office. I was encouraged by your resume and pleased to hear all of the wonderful comments about your experience. But you have some very serious challenges in this Department.

Yesterday, I said that it is time for us to get into the bowels of the Department of Homeland Security. One method of doing that is making sure that you have the tools you need to get the job done. Part of that is people. Do you have a sufficient number of people to get the job done? The other part of that is the competency of the individuals in the respective departments.

I have learned from my past experience as a mayor and governor that you are only as good as the team that you have. Far too often I have noticed in the Federal Government, we ask people to do the job and then do not give them the people the training they need to do the job. We must have good and competent individuals for positions of such importance.

This is a very serious matter that we are undertaking; one that directly affects national security. I am concerned about where we are today. I am hopeful that under the direction of Secretary Chertoff, the Department will move forward and get the job done for the American people.

Thank you.

Chairman COLLINS. Thank you. Senator Levin.

Senator LEVIN. Thank you, Madam Chairman.

Chairman COLLINS. Thank you.

Both of our nominees have filed responses to biographical and financial questionnaires, answered pre-hearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics.

Without objection, this information will be made part of the hearing record with the exception of the financial data which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nominations hearings give their testimony under oath. I would ask the nominees to please stand and raise your right hand.

Do you swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BAKER. I do.

Ms. MYERS. I do.

Chairman COLLINS. You may be seated.

Mr. Baker, I understand that you have family members present, and I would invite you to introduce them to the Committee.

Mr. BAKER. I would be delighted to. My daughters Katie and Meg are here, both from other cities. And I am delighted to have them here.

Chairman COLLINS. We welcome you. We are delighted to have you here, as well.

I understand, Ms. Myers, that you also have some family members present?

Ms. MYERS. That is correct, Chairman. I am pleased to introduce my parents, David and Kathy Sinzheimer, who are in from Kansas City; my fiance, John Wood; and my future in-laws, Bob and Elizabeth Wood.

Chairman COLLINS. Are they all here for the wedding preparations, as well?

Ms. MYERS. They are. This coincided very nicely for that.

Chairman COLLINS. We welcome them, also.

Mr. Baker, I would ask that you proceed with your statement.

TESTIMONY OF STEWART A. BAKER,¹ TO BE ASSISTANT SECRETARY FOR POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BAKER. Thank you, Madam Chairman and Members of the Committee.

It is really an honor to have been nominated for this position. But I have to say that it is a daunting prospect. I think Senator Voinovich accurately stated how high the stakes are. The Department is still inventing itself. We will have to invent the Policy Office, as well. And we are doing that against a backdrop of terrorists who are determined to kill as many Americans as they can, and a

¹The prepared statement of Mr. Baker appears in the Appendix on page 31.

The biographical and professional information appear in the Appendix on page 33.

The pre-hearing questions and responses appear in the Appendix on page 39.

The post-hearing questions and responses appear in the Appendix on page 123.

natural disaster that compares to the Chicago fire and the San Francisco earthquake, the kind of thing you hope only happens once in a 100 years.

It shows what the stakes are for this job and suggests that any mistake is going to be costly. The job description ought to require perfection, and I am quite keenly aware that I am not perfect. And even if I were not aware of that, both of my daughters, as daughters will, are glad to remind me.

So the real question, I think, is why you would want to take a job where you are guaranteed to make mistakes that will have that kind of cost? I think the best answer to that is something that happened to me after I agreed to do this. When he heard it, the guy who has the office just two doors down from me gave me an E-mail from his best friend. It was an ordinary E-mail about his best friend's wedding, saying "Tuxedos for my groomsmen will be supplied by Zeller Tuxedo, which has locations all over the Tri-state area. See the website. Just go to one of the locations and get fitted. Do this please by September 20."

About 5 or 6 minutes after he got that E-mail, my friend sent back a note teasing Peter Frank, who sent it to him, over having lost his wallet at the bachelor party.

The return E-mail never arrived. Because in that 5 or 6 minutes, American Airlines Flight 11 hit just one flight above Peter Frank's office. Instead of a wedding, of course, there was only a memorial service.

We have all been touched by this event, and we face a long struggle with an enemy that wants to have Peter Franks every day die in this country.

If you want to be part of that struggle, it seems to me, the Department of Homeland Security is the place to be. I do want to be part of that struggle. And that is why I am so thrilled to have the opportunity to join this Department.

I will not dwell on my professional background. It is in my prepared statement. I would be glad to talk about some of the ideas that I have for ways in which the Policy Office could, as Senator Lieberman suggested, help to unify the different components of the Agency. I think that is a vital task for this office.

Instead of dwelling on either of those things, I would just like to say two things about the people I will be working for. When I talk to young associates who are thinking about going into the government, I tell them it really does not matter what the position description is. It does not matter what your title is going to be. You really only have to ask, "Do you respect and like the people that you are going to work for?" If you do, you are going to have a great time and you are going to accomplish a lot. If you do not, it will be a miserable experience.

I applied that test when I took this job, as well. I have known Michael Chertoff for a decade. I like him. I respect him. He is a fine leader, a terrific intellect.

I have seen Michael Jackson tested in the last few weeks, and I have great respect for him, as well. So I am delighted to be joining their team.

And I guess last, I would say I am delighted to be working with this Committee, which has a great tradition of respect for each

other, and an assumption that everyone is working for the same goal, the safety of the American people. And I can assure you, I will treat all of you with precisely that attitude. If you have any questions about any policy that we may adopt or may be thinking about or that you think we should adopt, just call me. I am glad to talk to any of you in the same spirit in which this Committee operates. Thank you.

Chairman COLLINS. Thank you. Ms. Myers.

TESTIMONY OF JULIE L. MYERS,¹ TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. MYERS. Thank you, Chairman Collins, Senator Lieberman, distinguished Members of the Committee.

I am honored and humbled to be before you today, to see the confidence that Secretary Chertoff and the President have shown in me by recommending me for the position of Assistant Secretary for Immigration and Customs Enforcement.

ICE is very fortunate to be staffed with tremendous law enforcement agents, lawyers, analysts and support staff. I have had the privilege of working with them as an Assistant U.S. Attorney in Brooklyn, as a Deputy Assistant Secretary for Money Laundering at the Treasury Department, as Chief of Staff for Michael Chertoff, and as Assistant Secretary for Export Enforcement at the Commerce Department. If confirmed, it would be my privilege to work with them again on our most important objective.

That objective could not be more important. ICE plays a vital role in ensuring that the American people are kept safe by ensuring that our facilities, our Federal facilities, are secure, and that our customs and immigration laws are effectively enforced.

Collaborating with other agencies, ICE plays an essential role in preventing terrorist attacks by preventing exploitation of our customs and immigration systems, but by doing so in a way that ensures confidence in our immigration system and our rule of law.

With respect to ICE's immigration enforcement mission, the Agency operates amidst immense challenges. According to some estimates, there are approximately 11 million illegal aliens in the United States and approximately 500,000 more coming every year.

The vast majority of these aliens come, understandably, because the promise of America is so great. And there can be no question that the process of entering and gaining citizenship is long and frustrating for many of these individuals.

But inevitably, a few illegal aliens come for far worse reasons. They break one law by entering this country in order to break more laws once they are here: To exploit children, to smuggle more people into the country, sometimes in the most inhumane circumstances possible, to deal in narcotics, and yes to commit acts of terrorism. First and foremost, ICE is committed to finding, prosecuting, and removing these aliens. If confirmed, this will be my top priority.

¹ The prepared statement of Ms. Myers appears in the Appendix on page 84.
The biographical and professional information appear in the Appendix on page 86.
The pre-hearing questions and responses appear in the Appendix on page 92.
The post-hearing questions and responses appear in the Appendix on page 149.

But ICE also has a more general responsibility to ensure that those who do seek to play by the rules are afforded and ensured that they get a fair and respectful treatment. I am talking about newly naturalized citizens who apply for applications to sponsor their relatives for admission, those persecuted in their home countries who apply for asylum and work their way through the review process, and employers that refuse to hire an individual without proper documentation.

We must find a way to honor our American tradition of welcoming newcomers from other lands while at the same time addressing the weaknesses in our immigration system. And strong and effective enforcement of our immigration laws is the way to do just that.

As the senators noted, ICE's immigration mission is only one part of its overall role. ICE has many other critical enforcement missions. If confirmed, I will work to ensure that these missions also receive priority.

I am particularly interested in ICE's significant role in money laundering, building upon the work that they have done to ensure that criminals and terrorists do not execute schemes through the financial systems to cause us harm. And also to focus on sensitive technologies.

With respect to my background and experience, I have always been interested in law enforcement and was privileged to serve as an Assistant U.S. Attorney in Brooklyn. Since that time, I have worked continuously in the field of law enforcement, in many of the areas that relate to ICE's core mission. I have tried criminal cases, and worked on everything from simple smuggling cases to complex money-laundering investigations to complex security fraud cases.

I have worked with the former INS system, trying to get criminal witnesses paroled into this country, worked with them on setting detainers, and worked with them in many other matters.

Since I have joined the Administration, I have had the privilege to work on issues that intersect with ICE's law enforcement mission at the Treasury, Commerce, and Justice Department.

With respect to my management experience, my key management experience lies in my experience as Assistant Secretary at the Commerce Department, the Chief of Staff for Michael Chertoff, and as a Deputy Assistant Secretary at the Treasury Department.

At the Commerce Department, I am pleased to say that my management style produced results. I was able to focus and target the agents on working on the most strategic violations, those that involved violations of our export laws that concern national security. Under my leadership, the Agency more than doubled its civil enforcement cases, as well as brought some of its most significant criminal cases, such as the Asher Karni smuggling investigation.

I would be pleased to answer any questions you have and I welcome, as Stewart Baker said, this immense challenge. Thank you.

Chairman COLLINS. Thank you, Ms. Myers.

I am going to start my questioning with the three standard questions that we ask of all nominees.

First, is there anything that you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Baker.

Mr. BAKER. No, I am not.

I have gone through a recusal process with respect to past representations that is satisfactory to the Office of Government Ethics, and I will adhere to those rules. But there is no barrier to carrying out my duties.

Chairman COLLINS. Ms. Myers.

Ms. MYERS. No, I am not aware of any problems there.

Chairman COLLINS. Second, do you know of anything personal or otherwise that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Baker.

Mr. BAKER. No.

Chairman COLLINS. Ms. Myers.

Ms. MYERS. No.

Chairman COLLINS. Third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, especially this one, if you are confirmed? Mr. Baker.

Mr. BAKER. Yes, I will.

Chairman COLLINS. Ms. Myers.

Ms. MYERS. Yes, Chairman Collins.

Chairman COLLINS. We will now begin a round of questions limited to 6 minutes each.

Ms. Myers, you talked about your management experience but, like Senator Lieberman, this is an issue that I want to pursue further with you. If confirmed, you will head the second largest investigative agency in the entire Federal Government. The Agency that you have been nominated to lead has more than 20,000 employees and a budget of approximately \$4 billion.

The Homeland Security Act specifically requires that the head of ICE have a minimum of 5 years management experience. In writing this law, this Committee did not put in similar requirements for many of the other positions but recognized that this agency is a huge management challenge.

It is evident from looking at your resume and hearing your testimony that you have considerable legal experience. You have terrific experience in trying cases, and in investigations. But I still have not heard very much about direct management experience. Could you expand on the management role that you played, specifically the number of employees you supervised, the management challenges that you have taken on including oversight of budgets? I am particularly interested in your response given ICE's financial and management challenges.

Ms. MYERS. Absolutely, Chairman Collins.

With respect to my work as Assistant Secretary at the Commerce Department over export enforcement, I supervised a nationwide law enforcement agency that had field offices in nine cities, as well as an international presence, with five attaches overseas. In that capacity, I had direct responsibility for a budget of approximately \$25 million and approximately 200 full-time employees.

My experience at the Commerce Department helped me develop a style for managing a regional law enforcement program. In other words, how do you effectively manage folks who are in San Francisco if you are here in Washington, DC? We were able to do this

by ensuring that all of the employees throughout the Agency knew what the mission was, what the most important things to accomplish would be, and how they would be rewarded. I would seek to take this same management style and apply it at ICE.

With respect to my work at the Department of Justice, I served as Chief of Staff for Michael Chertoff. The Criminal Division has approximately 500 lawyers and a budget of over \$120 million. In my capacity as Chief of Staff for Michael Chertoff, I directly supervised the Office of Administration, which oversaw the budgets. I had a lot of experience at that time working with a tight budget, looking at where there are difficulties and problems and making sure we squeezed the most out of our very limited Federal resources.

In addition, as Chief of Staff I had a bird's eye view not only into the Secretary's management style but also into how different deputy assistant attorney generals supervise cases and run things in a way that is most effective.

I believe it is fair to say that it was based on my performance at the Justice Department that Secretary Chertoff recommended me for this job and believe that I have sufficient qualifications for this job.

At the Treasury Department, I was Deputy Assistant Secretary for Financial Crimes. In that capacity, I directly supervised two sections of the Treasury's Office of Enforcement at that time, the Counter Narcotics Section and the International Money-laundering Section. There were approximately 14 permanent FTEs in those sections.

We also had broader oversight for many of the programs that were in legacy of Customs, FinCen, and other parts of the Treasury Department. So I directed broad and large programs in those other sections, although I did not do the day-to-day or case review on all of them.

Prior to that I was an Assistant U.S. Attorney in the Eastern District of New York. In that capacity I had the ability to manage cases and supervise agents and junior Assistant U.S. Attorneys on occasion.

I believe together all of this gives me the minimum management experience that is required under the statute. But let me just add, I believe that my management style has worked at the Commerce, Justice, and Treasury Departments, and I will do all that I can to ensure that the ICE employees, if confirmed, have a clear sense of mission and exceed in their very daunting goals.

Chairman COLLINS. Thank you.

Mr. Baker, there are obviously a number of questions that have arisen in the wake of Katrina about the Department's emergency preparedness and response. If you are confirmed, what role would you envision for the policy office in improving emergency preparedness and response, whether it is to a natural disaster or a terrorist attack?

Mr. BAKER. Thank you, Madam Chairman.

I think that is clearly one of the top issues that the Policy Office is going to have to face. I have already begun talking to people in the office about beginning a policy review of what can be done,

what lessons have been learned from the events surrounding Katrina.

We obviously cannot be satisfied with what happened. There are any number of lessons to be learned. And they are lessons that we are going to have to apply, as you say, in the event of an attack on one of our cities with a nuclear weapon or a biological weapon that raises many of the same evacuation and other issues.

So I expect to play a central role in reviewing department-wide policies for preparedness.

Chairman COLLINS. Senator Lieberman.

Senator LIEBERMAN. Thanks very much, Madam Chairman.

Mr. Baker, as I indicated in my opening statement, I am concerned about the Administration's intentions with regard to staffing the Policy Office you are nominated to head, and the new directorate. The intention seems to be largely to transfer employees from existing positions rather than creating new ones.

I think the Department is pressed and the Department's limited policy planning thus far will put a lot of pressure on your office. And I am concerned that whether, in giving you this big new job, we will not be giving you the staff to carry out all that has to be done effectively. Do you share my worries?

Mr. BAKER. I do not think there is anyone who has taken a job in government who has not thought they could do a better job with more people.

Senator LIEBERMAN. This is true.

Mr. BAKER. In fact, I have put off until about now the planning for exactly how we might staff this office. I do not think any final decisions are made on staffing. I intend to sit down with the Secretary and the Deputy Secretary and go through the list of functions. We certainly will have authority to hire more people. The question is how many more people, how many people we can hope to get as detailees.

But I will certainly make the case aggressively for a staff that allows us to do this effectively.

Senator LIEBERMAN. Good, and please remember, if you are confirmed for this position, that you have a Committee here that wants this Department to work and is prepared to be, so far as you make a good argument, your advocate for the adequate support that you need.

Ms. Myers, I appreciate that Senator Collins asked you the same question that I raised in my opening statement about the 5-year requirement. It is unusual for there to be that kind of explicit requirement, and it was put in presumably, I am sure, because of the concern about the management challenges there.

So I think we do have a responsibility to ask you about it. I appreciate your answer. You have mentioned, I believe, four positions that you previously held that you believe satisfy the 5-year management requirement. For the record, now or later, can you tell me how long you were in each? Do you remember it now?

Ms. MYERS. Senator, I believe I could come fairly close right now.

Senator LIEBERMAN. I will not hold you to the detail if you want to correct it afterward. So give it a try now.

Ms. MYERS. In my current position, which I did not mention in my response to the Chairman's question, as Special Assistant to

the President for Personnel, I do manage a small staff which has varied up to three deputies as well as support staff and interns. I have held this position since mid-November 2004 when I was asked to come over to the White House and serve in that position.

Senator LIEBERMAN. So that is about 10 months?

Ms. MYERS. That is correct, Senator.

With respect to my position as Assistant Secretary for Export Enforcement, I was confirmed I believe in October 2003, and I held that until I moved on to the White House. I served in a senior adviser capacity from September to October 2003.

With respect to my position as chief of staff in the Criminal Division I went over, I believe, in November 2002. At the time, my job at the Treasury Department looked like it was going to be eliminated based on the new Department of Homeland Security. So I went over to work for Michael Chertoff.

I left there to go to the Commerce Department in September 2003, and that was because Secretary Chertoff was nominated and confirmed as a Third Circuit Judge.

With respect to my position as Deputy Assistant Secretary, I held that position from November 2001 until I left to go to the Justice Department the following year.

With respect my position as an Assistant U.S. Attorney in the Eastern District, I held that position from I believe October 1999 until I left in 2001.

Prior to that, I was an Associate Independent Counsel for Ken Starr, and I held that position for approximately 16 months.

Senator LIEBERMAN. Do you claim management experience from that work with the Independent Counsel's office?

Ms. MYERS. No, I do not.

Senator LIEBERMAN. But you do from the time as an Assistant U.S. attorney?

Ms. MYERS. That is correct, because there I was directly responsible and in charge of investigations and cases of different sizes, and I also was directly in charge, in certain instances, of more junior AUSAs as well as criminal investigators.

Senator LIEBERMAN. Thanks. We will go over that. I have only got about a minute more.

I want to ask you each if you could give me a quick reaction to the special concern that I have within the area of immigration policy about the treatment of asylum seekers that the Commission on International Religious Freedom found that a majority of DHS facilities treated asylum seekers like criminals. That was pretty much the description of the nonpartisan commission. And that DHS did not have a consistent policy on treatment release and return of these asylum seekers to the countries that they were fleeing.

I want to ask you if you are familiar with the Commission's finding and recommendations? Would you see formulation of a consistent policy on asylum seekers, and hopefully a better one, as a policy priority for your office? And a comparable question for you, Ms. Myers.

Mr. BAKER. Thank you, Senator. I am familiar with the Commission. In fact, two of my friends have been chairs of the Commission at various times. I have a lot of respect for both of them.

You mentioned this report when we met. I have been able to at least get the executive summary off the website.

It is very thoughtful. There are a lot of recommendations there. I will certainly look at them closely. I think that we ought to be able to have a constructive response to those suggestions.

Senator LIEBERMAN. Good. Ms. Myers, are you familiar with that?

Ms. MYERS. Yes, Senator, you also raised it in a meeting.

Senator LIEBERMAN. That is true, I made you familiar with it.

Ms. MYERS. I had the ability to look at the report and saw that there was a lot to be said about increasing transparency in our process and improving, in particular, ICE's role there. If confirmed, I would certainly look very hard at the recommendations made by the Commission with respect to ICE's role, not only with the treatment of asylum seekers but also to ensure that asylum seekers have the same parole criteria applied nationwide, which was something that was troubling to me that I was not aware of previously.

Senator LIEBERMAN. I appreciate that. The bottom line obviously is we should be treating like criminals people who probably are, or at least there is reasonable cause to believe are, and treating asylum seekers as people who probably have a sincere motivation to get into the country.

Obviously, not all of them pass the test. But I think it is fundamental to our national principles, and I appreciate that both of you went back and looked at that. I look forward to continuing to work with you on it. Thank you.

Chairman COLLINS. Thank you. Senator Voinovich.

Senator VOINOVICH. Thank you, Madam Chairman.

Ms. Myers, I have the same problem that Senator Collins and Senator Lieberman elluded to. I was a mayor for 10 years and a governor for 8 years, and I know management. I am really concerned about your management experience. ICE is a very large organization, with over 20,000 employees and a \$4 billion budget.

Senator Lieberman began to review your experience, but I have the list right here. You spent 2 years as Assistant District Attorney, then you spent about a year working with money laundering, 10 months as Chief of Staff for Mike Chertoff who then went onto the bench. Then you worked for a year and 3 months with the Commerce Department. Can you tell me why you left the Commerce Department to go to the White House?

Ms. MYERS. I was asked to come serve the President in this capacity. It was explained to me that the White House thought it would be useful to have someone who had some additional subject matter expertise in particular areas that I am knowledgeable about, particularly law enforcement. So I was asked to help with the transition in Presidential personnel.

Senator VOINOVICH. The problem I have is the longevity of your experiences. When you begin working at any job, it takes a couple of months to find out just what is going on. I have concerns about the short duration of your service in each of these positions. I would really like to sit down and talk with you.

Madam Chairman, I think that we ought to have a meeting with Mike Chertoff, either privately or publicly, to ask him why he wants Ms. Myers for this position. She will be working for him, and

obviously, he would not sign off on her unless he really thinks she can get the job done.

But I would like to have him spend some time with us, telling us personally why he thinks you are qualified for the job. Because based on the resume, I do not think you are.

Ms. MYERS. Senator, I appreciate your concerns. There is no question that ICE is a large agency with significant challenges. One thing that I would point out is that during my time in Washington I have had the ability throughout this entire period to work with legacy Customs and legacy INS agents in different capacities, at the Justice Department, at the Commerce Department, at the Treasury Department. I will bring to this position a knowledge of those other departments and those other needs.

I know what it is like to work side-by-side with a Customs agent trying a case. I also know what it is like to be supervising a Customs agent working on the national money-laundering strategy. I also know what it is like to be at the Justice Department looking at how can we get more cooperation from INS and Customs, the legacy agencies, in human smuggling cases. I also know what it is like to be at the Commerce Department, doing dual use export controls and trying to partner effectively with Immigration and Customs Enforcement on their common mission to prevent export violations.

And those things will serve me well, Senator, and ensure that we can bring ICE and make it more successful as we move along.

Senator VOINOVICH. What is your management style?

Ms. MYERS. My management style is to ensure that employees know what the mission is of the Agency, know what is expected of them, and that they are required to live up to that.

I will seek—I realize that I am not 80 years old. I have a few gray hairs, more coming. But I will seek to work with those who are knowledgeable in this area, who know more than I do. I will seek the knowledge of the experienced agents out in the field, that have worked cases in different ways and in different methods. I will partner closely with the other Federal law enforcement officials throughout the government.

Based on my work in Washington, DC, and my work in New York, I am pleased to say that I have a close working relationship with most of the leading law enforcement officials in this town. And so I can call up the head of DEA and say how can we solve this problem? How can we get this done?

I can call the head of the Criminal Division and say how can we partner more effectively with the Justice Department? And that is based on my work at the other agencies and the relationships and trust that I have built over time.

I am confident that Secretary Chertoff recommended me based on my work at the Department. And if the Senate confirms me, I will not let you down.

Senator VOINOVICH. Thank you.

Mr. Baker, have you had a chance to look at the Second Stage Review?

Mr. BAKER. Yes I have, Senator,

Senator VOINOVICH. What do you think of it?

Mr. BAKER. I think it is a very helpful step forward in integrating the Department.

Senator VOINOVICH. As the nominee for Assistant Secretary of Policy of DHS, do you feel comfortable that you will have the organization to facilitate your ability to get the job done?

Mr. BAKER. The Secretary and the Deputy Secretary both are committed to having a successful Policy Office. They have the same vision that I do of its role in integrating the Department's policies and communicating those policies effectively to the components so that they can align their policies early on with departmental priorities.

So I actually believe that their vision and mine are exactly the same.

Senator VOINOVICH. Thank you.
Chairman COLLINS. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Madam Chairman.

First for Mr. Baker, relative to your qualifications, you have testified that you expect to play a central role in reviewing the Department's emergency planning and response and identifying lessons learned from Katrina. You are going to have to be looking at such matters as evacuation and plan development and execution, coordination between Federal, State and local government personnel, deployment of and coordination with National Guard and DOD personnel, development, use and purchase of interoperable communications equipment.

You do not have any experience in those areas, do you?

Mr. BAKER. No, my experience is principally in national security. And I will say in the area of interoperability, most of my last 10 years of my private practice revolved around technology and the uses of technology, and many of the interoperability questions that we will struggle with are technical in nature.

Senator LEVIN. In terms of the failure of the various units of government to have interoperability—interoperable equipment, those challenges specifically in those areas that they have not met, you do not have experience in that particular area?

Mr. BAKER. I have worked in—large parts of my practice concerned how to make cell phones and new telephone technology subject to wiretap laws, to accommodate the structure and protocols that are used in new forms of technology to operate in a way that works for law enforcement. So while it is not directly relevant, it is pretty close.

Senator LEVIN. Any other areas of emergency response, do you have any experience in those areas?

Mr. BAKER. No.

Senator LEVIN. In terms of whether or not grants should be risk-based or not, we have had a great dispute about that. This Committee has done some work relative to those formulas as to how those grants should be allocated, whether they ought to be risk-based, whether they ought to be apportioned in some other way. Do you have any views on that?

Mr. BAKER. I think they should be risk-based as much as they can be. It is difficult to entirely predict where the risks are. And

if those predictions are made public, the risk can shift. So it is important to take risk into account in making those decisions.

Senator LEVIN. Would you agree that there are smaller places that have great risks? Places that maybe you or the public have never heard of that might have high risks? Would you agree with that?

Mr. BAKER. I certainly could not rule that out. If we ruled something out, there is always the possibility that Al Qeada would say well, they have ruled that out, let us try that.

Senator LEVIN. We have a small town in Michigan that is probably one of the largest entry points for commerce in the country, one of the top five. It has a bridge, it has a tunnel. It has a major chemical facility that is on the border with Canada with a very narrow river. It is called Port Huron. Have you ever heard of it?

Mr. BAKER. I have. I went to Edsel Ford High School, Senator.

Senator LEVIN. Places like that around the country, that people have never heard of perhaps in the Agency, even though they are small and their names are not known—I am glad you do know that—but nonetheless have to be taken into account. Would you agree?

Mr. BAKER. I agree.

Senator LEVIN. Ms. Myers, I, too, have questions in terms of your experience and qualifications, as to whether you meet the statutory test. I want to ask you about something that you, I believe, either knew about or should have known about however when you were the Chief of Staff for Michael Chertoff at the Criminal Division.

There have been publicly released E-mails now of FBI agents expressing deep concerns at Guantanamo because of the behavior of certain Department of Defense personnel toward detainees. It was such a hotly debated issue between those personnel who were in the Department of Justice Criminal Division, that the FBI personnel said that they could not even stay there, could not participate. They used the word torture in one of those E-mails. They used the word, in one of the E-mails that went back to the Department of Justice, they said that their concerns were so deep that they had to be raised, they had to be discussed, and that the FBI, they thought could not participate in any of the interrogations, of any of the dealings with the detainees.

The discussions were so heated that sometimes phones were slammed down.

Did you know anything about those disputes when you were there?

Ms. MYERS. No, I did not, Senator.

Senator LEVIN. Who did? Chertoff did not know, you did not know, Fisher did not know. Who did? When we talk about management, this is not a common kind of event where there is some dispute over who is going to win a World Series game.

This is where you have weekly meetings that are referred to in these E-mails, weekly meetings where these disputes were aired down at Guantanamo between Department of Justice personnel and the DOD. You have got four named people, Bruce Schwartz, Dave Namius, Laura Parsky, and Alice Fisher. Do you know those folks?

Ms. MYERS. I do, Senator.

Senator LEVIN. They were involved. And they were horrified by what they saw. Who would have known inside the Department of Justice, if your boss did not know, Ms. Fisher did not know, and you did not know? We are talking about management. Who should have known? Who should have gotten those E-mails?

Ms. MYERS. Senator, I believe the E-mails you are referring to were produced later after the time—

Senator LEVIN. But they were about events at the time you were there. They describe events at the time.

Ms. MYERS. That is correct, Senator.

Senator LEVIN. Have you ever talked to either Fisher, Schwartz, Namius, or Parsky about these events? Or Chertoff?

Ms. MYERS. Senator, I was present during the preparation, some of the preparation of Secretary Chertoff and Ms. Fisher for their hearings. Other than that, I have not heard any discussions with respect to these matters.

Senator LEVIN. And so those matters were discussed during preparations for those hearings?

Ms. MYERS. Senator, at the time of preparation for Ms. Fisher's hearings, I understand that the E-mails were available. And so at that time, the E-mail was discussed, it is my understanding.

Senator LEVIN. What was the nature of the discussion?

Ms. MYERS. Senator, I do not recall what the nature the discussion was. I believe that it focused on what, if any, involvement any of these individuals had in this matter.

Senator LEVIN. And what was the involvement?

Ms. MYERS. I believe Secretary Chertoff and Ms. Fisher could speak best for themselves about their involvement. I would tell you that I had no involvement, sir.

Senator LEVIN. The first you ever heard about this is when you read it in the paper? Or what was the first time you ever heard about these disputes?

Ms. MYERS. Senator, I do not recall when I first learned about the existence of these E-mails.

Senator LEVIN. I am talking about the disputes between Department of Justice personnel and the Department of Defense personnel whose tactics the Department of Justice personnel who are on Chertoff's staff were objecting to?

Ms. MYERS. Senator, I was not—

Senator LEVIN. When did you first hear about those disputes? That is my question.

Ms. MYERS. Senator, I believe it was either in the paper or in preparation for Secretary Chertoff's hearings. When I was at the Department, my focus was on the Office of Administration, as well as some of the other more sensitive sections.

Senator LEVIN. My time is up for this round. Thank you.

Chairman COLLINS. The Senate has begun two roll call votes. I would suggest that we each ask one question and then will submit to the witnesses considerable additional questions for the record. The hearing record will remain open until 5 o'clock tomorrow for the submission of additional questions and other materials.

Ms. Myers, a lot of individuals and organizations that have taken a look at the Department of Homeland Security have proposed the merger of ICE and the Customs and Border Protection. I under-

stand that Secretary Chertoff has decided, at least for the time being, not to pursue a merger of ICE and CBP. The Inspector General has done a report that should be released shortly, which I understand will recommend the merger of ICE and CBP.

What I have found and what I understand that the IG report has confirmed is that many field employees of the two agencies are very frustrated with what they view as the unnatural separation between the two organizations. In addition, there have been turf battles, budget fights, and a feeling among outside law enforcement that the current organization has not worked well.

What is your view on combining the two agencies?

Ms. MYERS. Chairman Collins, I appreciate that question and the concerns regarding coordination that feed into that question. It is my belief that both agencies are under the same roof, under the same leadership, under Secretary Chertoff and that they should be coordinating well and properly on all of their day-to-day functions, as I should with CIS and other law enforcement parts of the Department.

With respect to whether or not the two agencies should be merged, it is my understanding, as you noted, that the Secretary and the Department undertook a very thorough review of whether or not that made sense, and that they determined that it was in the best and most strategic interest of the Department for the two agencies to remain separate. But that there should be some additional steps taken to improve coordination. And the steps taken to improve coordination that the Department is suggesting, include an Office of Operation Coordinations which would coordinate a relationship not only between ICE and CBP but also between the CBP and Coast Guard or the CBP and the Secret Service, as well as the Policy Office that is hopefully going to be headed by Stewart Baker. That is a central policy making force that would unify relationships.

I will tell you that I am very concerned about the reports I hear about the failure to have proper coordination. If confirmed, it is one of my top priorities to ensure that these agencies work well together and work side-by-side.

I know Commissioner Bonner from our time at Treasury together, and I have already met with him twice to talk about ways that the agencies can improve intelligence sharing, can improve joint initiatives, and can work more effectively together. I will send that message to the field, as well.

Chairman COLLINS. Thank you, Senator Lieberman.

Senator LIEBERMAN. Thanks, Madam Chairman.

Ms. Myers, as you well know, ICE has a C as well as an I in it. There are some observers who think that thus far the Department has not given enough priority to the customs enforcement parts of it. I wondered what your feelings are about that and what priorities you would have if you take this position for customs enforcement?

Ms. MYERS. Well, certainly the C part of the mission, the customs part, is the part that I was most familiar with from my previous experience. One of my highest priorities will be to ensure that ICE's important customs missions are not diminished or neglected in any way.

In particular, I am interested in the work on anti-money-laundering as well as strategic arms. I think we should look to see where we can fold in immigration enforcement with those. If we are bringing a money-laundering case, is there an immigration angle? If it is an immigration case, is there a money-laundering angle?

We should look at, for example, are there individuals who are in this country illegally who are trying to gain access to our sensitive goods and technologies? That is a way, again, that our immigration mission and our customs mission coincide and intersect.

But I am absolutely committed to those missions and have enjoyed working in those for a number of years.

Senator LIEBERMAN. Good. Thank you.

Chairman COLLINS. Senator Voinovich.

Senator VOINOVICH. There is a recently released audit noting that the Agency has been plagued with financial management issues and that ICE, which has had a lengthy hiring freeze as a result of financial difficulties, has asked Congress to reprogram several hundred million dollars in the last year alone. Are you familiar with these issues?

Ms. MYERS. Yes, I am, Senator.

Senator VOINOVICH. Do you understand that will be one of the challenges you will face if you are confirmed?

Ms. MYERS. No question, Senator. Absolutely. I have already met not only with the CFO for the Department but also ICE's Acting CFO. And financial management would be one of my top priorities to focus on.

In trying to figure out what went wrong, how ICE got where they are, it appeared to me that there were really three core reasons that they got in the situation they are. And I think those provide guidance for how we can move forward then more effectively.

First, as has been previously noted, the initial allocation of funds within the Department was not necessarily even. And so ICE did not receive the proper allocation of funding in the beginning. That has been corrected, thanks to the help of Congress.

I think the second reason is that ICE was still getting up to speed, in terms of having top financial managers in place in the organization. To this day, ICE does not have a permanent chief financial officer.

If confirmed, I would make sure to do that immediately and to ensure that proper financial management practices are followed.

The third reason is ICE's mission has been stretched beyond belief. Last year there were more removals than ever before. They are continuing to do more and more while working with limited resources. So that has been a challenge that the Agency has had to get its arms around.

Senator VOINOVICH. Thank you.

Chairman COLLINS. Senator Levin.

Senator LEVIN. Thank you. This is a question which follows up on some of Senator Lieberman's concerns relative to asylees.

Due to delays in our immigration process, a country's situation can change from the time that an alien flees his home country to the United States and when he finally receives a hearing before a judge.

One such case relates to Iraq. We have got about 1,000 Iraqi families in this country who came here legally seeking asylum in the 1990s. They fled Saddam Hussein, and they had good reasons to flee Saddam Hussein. They requested asylum when they got to this country.

Then in 2003, with Saddam Hussein gone, the question is are they still going to be treated according to the law which existed and the facts which existed at the time they fled? Or are they now going to be shipped back to Iraq where there are plenty of dangers? That is not the main point. The main point is they came here legally, sought asylum, set down roots, raised families, opened businesses. I am talking about people against whom there is no evidence of improper or illegal conduct.

Now what? Are we going to treat them fairly? Or are we going to say that we are going to uproot you because now Saddam is gone, and send you back to a country where again there is plenty of dangers for them. Many of them would have to go back to areas which are dangerous.

But beyond that, when they have abided by all of our rules, and when the reasons for their coming would have qualified them for asylum at the time they came. What rules should apply to them?

Ms. MYERS. Senator, your question points out kind of a fundamental problem of things taking too long once people get here and apply for the proper avenues of relief.

It is my understanding that ICE has a policy of evaluating circumstances in cases like this on a case-by-case basis, to make sure we are treating people fairly and not penalizing them for the slowness of our government processes.

If confirmed, I would make sure that is the procedure that is followed.

Chairman COLLINS. Senator Levin, the time has expired in the vote. Accordingly, we are going to have to end the hearing, but I would invite you to submit additional questions for the record.

I want to thank our witnesses for being here today.

This hearing is now adjourned.

[Whereupon, at 12:04 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF SENATOR AKAKA

Thank you Chairman Collins. I wish to add my welcome to Mr. Baker, Ms. Myers, and their families and friends.

You are both here because you wish to continue your careers in public service by serving as Assistant Secretaries in the Department of Homeland Security (DHS). These positions demand individuals who have demonstrated extensive executive level leadership and the ability to manage a sizable budget and diverse workforce. Mr. Baker, if confirmed, you will be the first DHS Assistant Secretary for Policy, and you will help define the role of the Office of Policy.

Ms. Myers, you have been nominated to lead Immigration and Customs Enforcement, an agency that is currently facing significant financial and human resource management challenges.

While every nomination considered by the Senate is important, I believe that today's hearing will be watched carefully by the American people, who are looking to this Committee to make sure we ask the appropriate, and sometimes tough, questions. The people of Hawaii, like all Americans, want to make sure that those leading DHS have the necessary experience and qualifications.

The creation of DHS in 2003 was the largest reorganization of the Federal Government since the Department of Defense was established in 1947. The merging of 22 legacy agencies into a single agency has created management challenges that DHS will face for years to come. Because of these significant challenges, DHS needs strong leaders. A qualified candidate must possess extensive experience managing people and budgets in addition to having experience in immigration or law enforcement or intelligence.

I am especially concerned about the current state of ICE, which is the second largest Federal law enforcement agency with a \$4 billion budget and over 15,000 employees in over 400 offices around the world.

ICE has extraordinary reach, extraordinary responsibilities for our national security, and extraordinary problems.

Financial difficulties have resulted in hiring freezes and reductions in training, bonuses, and travel. ICE's financial crisis has resulted in DHS reprogramming \$500 million in FY 04 and FY 05 funds and requesting an additional \$267 million in the April 2005 emergency supplemental. Despite assurances that ICE's financial problems have been resolved, DHS Inspector General Richard Skinner testified in July 2005 that ICE cannot properly account for millions of dollars every month due to its deficient financial management system. This financial crisis has had an adverse impact on the readiness and morale of the ICE workforce.

ICE needs strong, experienced leadership to repair these management problems.

Mr. Baker, the Administration has submitted legislation to the Congress that this Committee is now considering which would create the position of an Undersecretary for Policy. According to Secretary Chertoff's transmittal letter to the Congress on his proposal, dated July 13, 2005, the new Office of Policy "will lead a unified, mission-focused policy approach" and will include a number of existing units, such as the Office of International Affairs, the Special Assistant to the Secretary for Private Sector Coordination, the Border and Transportation Security Policy and Planning Office, elements of the Border and Transportation Security Office of International Enforcement, the Homeland Security Advisory Committee, and the Office of Immigration Statistics. In addition, the Secretary is proposing to add a strategic policy planning office and a refugee policy coordinator.

This is an enormous range of new responsibilities and will require someone with extensive management experience and vision.

I would argue that the key focus of this office should be on strategic planning. Given the nature of this office should be on strategic planning. Given the nature

of the Department's enormous size and breadth of responsibilities, someone is needed who can provide focus and direction to the mission of preventing and responding to terrorist attacks and natural disasters.

Mr. Baker, you are being nominated for the position of Assistant Secretary with the expectation of moving into the Undersecretary position should the Congress pass the reform proposal. One of the issues this Committee will have to address is whether you will need to be reconfirmed at a later date for that higher position should you be confirmed for the Assistant Secretary position.

One of the lessons learned from the Hurricane Katrina response is that the senior officials of an agency should have demonstrated leadership skills. The positions of Assistant Secretary for ICE and Assistant Secretary for Policy are no exception.

I would like to draw the attention of my colleagues to one measure of leadership skills: The standards the Office of Personnel Management has developed for the government's career Senior Executive Service (SES).

To qualify for an SES position, a candidate must possess the following five executive qualifications:

- Leading Change;
- Leading People;
- Being Results Driven;
- Having Business Acumen; and
- Building coalitions/Communications.

SES candidates demonstrate these qualifications through experience in key executive skills such as leading others to rapidly adjust organizational behavior and work methods; supervising and managing a diverse workforce; developing strategic human capital management plans; establishing performance standards and plans; managing the budgetary process; overseeing the allocation of financial resources; and developing and maintaining positive working relationships with internal groups and external groups such as Congress, the Office of Management and Budget, and the White House.

These qualifications and experiences help ensure that the Federal Government's senior executives have the ability to establish a clear vision for the organization and to drive others to succeed. While political appointees are not required to meet these qualifications, I believe it would be difficult for an agency head to be successful without them.

I look forward to this opportunity to hear from Mr. Baker and Ms. Myers. Thank you Madam Chairman.

PREPARED STATEMENT OF STEWART A. BAKER

Thank you, Chairman Collins. I am also grateful for the introductory remarks of Senators McCain and Robb. It has been a pleasure to know and to work with both of them. And members of the committee, thank you for your welcome and for having this hearing today.

I am honored by this nomination. Honored and daunted. This is a new position, heading a new office in a Department that is still inventing itself in the face of an unprecedented terrorist threat and, now, a nearly unprecedented natural disaster. In both cases, anything less than perfection puts American lives at risk. That's daunting. (Indeed, it's particularly daunting to me because, as my wife and kids are often pleased to point out, I may be many things, but perfect is not one of them.)

I suppose you might ask why I wanted the job. When I announced that I was leaving my law firm to go to the Department, another lawyer two doors down from me sent me an email that he'd received from Peter Frank, a friend whose wedding he was going to. "Tuxedos for my groomsmen will be supplied by Zeller Tuxedo. Zeller has locations all over the tri-state area Just go to one of these locations and get fitted, the account is under my name. ... This needs to be done by Sept. 20th."

That may seem pretty mundane. People get married every day. But Peter Frank didn't. He sent that email at 8:41 on September 11, 2001, from the 92d floor of World Trade Center 1, just 5 minutes before the tower was hit by American Airlines Flight 11. Everyone who was going to the wedding went to a memorial service instead.

That's why I'm here. Americans face a long, deadly struggle against terror. The Department of Homeland Security is in the middle of that fight. And that's where I want to be. It is four years after the attacks, but we still have plenty to do to prepare for the kind of attacks our enemies are hoping to launch. If anyone thought differently, Hurricane Katrina showed us just how much work we still have to do.

In adding my efforts to that labor, I will draw on lengthy experience in government and in private practice. In 2004 and early 2005, I was the General Counsel of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction – known more familiarly as the WMD Commission or the Robb-Silberman Commission. The General Counsel's office was principally responsible for the drafting of the report. The Commission looked not just at why our intelligence agencies failed in estimating Iraq's WMD program but also at what had to be done to improve our intelligence on this, the central challenge of the early 21st century. Those lessons are central to the Department's mission, and I hope to be able to bring that wide-ranging overview to bear on the task of making sure that weapons of mass destruction are not used against us here at home.

I also served as General Counsel of the National Security Agency, which gave me an appreciation for the capabilities of that agency – and the role of technology -- in combating terrorism. It also deepened my recognition of how important it is to protect privacy and civil liberties while acting to protect national security.

When I wasn't working for the government, I built a diverse private practice that included appellate and Supreme Court advocacy, extensive international trade litigation and arbitration, and a variety of technology disputes. I also devoted a great deal of time to pro bono matters and to commentary on homeland security issues, including testimony before the 9/11 Commission on the adverse effects of the "wall" between law enforcement and intelligence.

I look forward to the challenge of building a policy office at the Department of Homeland Security. I have been impressed by the talent and work ethic of the Department's employees. They know what the stakes are, and they will not rest in the face of the threats we face, whether natural or man-made. In their passion and commitment, they compare favorably to any government agency I've ever worked for.

What they need is something that other departments take for granted –longstanding institutions with roles and memories that encompass the entire Department. A department-wide policy office will help to fill that gap. It can unify the Department by establishing policies that apply across the board. It can bring focus and a single set of priorities to agencies that are still learning what they have in common with their new siblings. That is one of the goals I have set for myself if I am confirmed to this position.

Another of my goals is to foster creativity. Our enemies need surprise to succeed, but surprise can be our ally too. We should not be content simply to continue the defenses we erected rapidly after 9/11. We need to keep trying new ideas and unpredictable tactics. We need to plan strategically for the long term, and we need the courage to question the assumptions on which major programs have been built. This applies equally to natural disasters as to those man made. I hope to bring a prudent creativity and a realistic iconoclasm to the Department's policies.

There was one more reason I was pleased to be nominated to this position. I give a lot of career advice to young lawyers thinking of going into government, and it's always pretty much the same. "It doesn't matter so much what the job is," I tell them, "as long as you're working for someone you like and respect." That's the advice I followed when I took this job. I've known Secretary Chertoff for more than a decade, and I respect and like him. I've seen him and Deputy Secretary Jackson tested harshly in recent weeks, and I only respect them more as a result. I look forward to being part of their team.

Finally, let me say what a pleasure it is to have this committee conducting oversight of the Department. I pledge to all the members of the committee that I will always want to hear your views on the Department's policies, not just in hearings but whenever you want to pick up the phone and talk about them. I will always listen, and I will always assume that we share a common goal of protecting Americans.

Thank you.

BIOGRAPHICAL AND FINANCIAL INFORMATION**A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names used.)

Stewart Abercrombie Baker

2. **Position to which nominated:**

Assistant Secretary for Policy

3. **Date of nomination:**

July 14, 2005

4. **Address:** (List current place of residence and office addresses.)

Business: Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036

5. **Date and place of birth:**

July 17, 1947; Poughkeepsie, New York

6. **Marital status:** (Include maiden name of wife or husband's name.)

Married; Anne Kornhauser Baker

7. **Names and ages of children:**

Margaret Anne Baker, age 28

Catherine Lynn Baker, age 25

Gordon Andrew Baker, age 21

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

UCLA School of Law, September 1973-June 1976 (JD, 1976)

UC Berkeley Graduate School of Planning, September 1970-June 1971 (no degree)

Brown University, September 1965-June 1970 (AB, 1970)

Edsel B. Ford High School, September 1963-June 1965 (diploma)

Cranbrook School, September 1959-June 1963 (no degree)

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Associate/Partner, Steptoe & Johnson LLP, Washington, D.C., July 1994-present; March 1981-July 1992;
September 1978-August 1979

General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of
Mass Destruction, Arlington, Virginia, May 2004-April 2005

General Counsel, National Security Agency, Fort Meade, Maryland, July 1992-July 1994

Deputy General Counsel, Department of Education, Washington, D.C., September 1979-February 1981

Clerk, Hon. John Paul Stevens, United States Supreme Court, Washington, D.C., August 1977-August
1978

Clerk, Hon. Frank M. Coffin, U.S Court of Appeals for the First Circuit, Portland, Maine, August 1976-July 1977
 Summer Law Clerk, O'Melveny & Myers, June 1975-September 1975
 Extern Law Clerk, Hon. Shirley Hufstedler, U.S. Court of Appeals for the Ninth Circuit, Los Angeles, California, Winter 1974-75
 Summer Law Clerk, Rhode Island Legal Services, June 1974-September 1974
 Manager, Summit Shop, September 1972-August 1973
 Paralegal, Rhode Island Legal Services, February 1972-September 1972
 Clerk, Summit Shop, October 1971-February 1972

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

Member, President's Export Council Subcommittee on Export Administration, 2003-present
 Consultant, International Trade Administration, Department of Commerce, July 2003-present
 Member, Free Trade Area of the Americas Experts Committee on Electronic Commerce, 1998-2002
 Member and Acting Chair, President Export Council Subcommittee on Encryption, 1998-2001
 Consultant, Defense Science Board, Washington, D.C., 1995-1996 and 1991-2001
 Member, Federal Trade Commission's Advisory Committee on Online Access and Security, 2000

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Partner, Steptoe & Johnson LLP
 Member, Board of Directors, Bridges.org (terminated 2004)
 Member, Advisory Board, NuServe (terminated 2004)
 Member, Advisory Board, Acqsacom S.A. (terminated 2004)
 Chair, Advisory Board, State and Local Legal Center (terminated 2002)

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Chair, American Bar Association Standing Committee on Law and National Security
 Member, The Federalist Society
 Member, Executive Council, The American Society of International Law
 Member, Council on Foreign Relations.

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Not applicable.

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Not applicable.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

March 2004, \$1,000 George W. Bush presidential campaign
 June 1999, \$1,000 George W. Bush presidential campaign

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Department of Defense Medal for Meritorious Civilian Service, 1994

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Books:

Editor and contributor, "Patriot Debates," American Bar Association (2005)
 Co-author, "The Limits of Trust: Cryptography, Governments, and Electronic Commerce" (1998)
 Co-author, "The UNCITRAL Arbitration Rules in Practice," (1992)

Other publications:

"Trade and Electronic Commerce," in "The World Trade Organization: Legal, Economic and Political Analysis" (Springer 2005)
 Book Review of "Free Culture" by Larry Lessig, in The Wall Street Journal (March 26, 2004)
 "Wall Nuts," Slate (December 31, 2003)
 "Electronic Evidence Compliance – A Guide for Internet Service Providers," Berkeley Tech. L. Journal 945 (2003)
 "A Patch in Time Saves Nine: Liability Risks for Unpatched Software," National Legal Center for the Public Interest (2003)
 Book Review of "Broadbandits" by Om Malik, in The Wall Street Journal (July 17, 2003)
 "Civil Liberties in Wartime" Slate Dialogue (with Eugene Volokh) (September 17-20, 2001)
 "The Executive's Desk Book on Corporate Risks and Response for Homeland Security" (2003)
 "E-Products and the WTO," 35 Int'l Lawyer 5 (2001)
 "How Courts Can Protect Against the ACPA In Rem Provisions' Vulnerability to Abuse," The Internet Newsletter, February 2001
 "Regulating e-commerce: draft convention considered," Trade Regulation Newsletter, March 2000
 "Survey of International Electronic and Digital Signature Initiatives," E-Commerce Law Report, July 1999
 "Wassenaar struggles with encryption policy," e-Business World, July/August 1999
 "Encryption: free the US '56+,'" ICC Business World, November/December 1999
 "International Developments Affecting Digital Signatures," 32 Int'l Lawyer 963 (1998)
 Book Review of "Privacy on the Line: The Politics of Wiretapping and Encryption," Notices of the AMS, June/July 1998
 "Does Industry Need Key Recovery?" Information Security Bulletin, September 1998
 "The New Encryption Export Policy: The US Government Rethinks Key Recovery," Electronic Banking Law & Commerce Report, October 1998
 "Decoding OECD Guidelines for Cryptography Policy," 31 Int'l Lawyer 729 (1997)
 "Towering Over Babel," American Society for Industrial Security, May 1997
 Book Review of "Law and Disorder in Cyberspace: Abolish the FCC and Let Common Law Rule the Telecosm" by Peter Huber, in The Wall Street Journal (November 3, 1997)
 "Government Regulation of Encryption Increases as International Coordination of Policy Is Deemed Necessary," High-Tech Industry, November/December 1997
 "Information warfare," The Journal of Commerce, April 22, 1996
 "Japan Enters the Crypto Wars," Wired, September 1996
 "Cutting red tape on encryption," The Journal of Commerce, September 27, 1996
 "The new encryption policy," The Journal of Commerce, November 18, 1996
 "Should Spies Be Cops?" 97 Foreign Policy 36 (Winter 1994-95)
 "The Spider in the 'Web': Censorship," Los Angeles Times, March 5, 1995
 "Chile's Road to Joining Nafta," The Journal of Commerce, May 4, 1995
 "Encryption: Shielding Cyberspace," The Journal of Commerce, July 25, 1995
 "The Net Escape Censorship? Ha!" Wired, September 1995
 "Beware, the Taxman Cometh to Cyberspace," Los Angeles Times, October 5, 1995

"Saving the Endangered Wiretap," Legal Times, November 20, 1995
 "Don't Worry, Be Happy - Why Clipper is Good for You," Wired, June 1994
 "China's MFN victory may go up in a cloud of tariffs," The Oregonian, August 26, 1994
 "Bypass Tokyo, Talk to Carmakers," The Journal of Commerce, September 27, 1994
 "After the NAFTA," 27 Int'l Lawyer 765 (1993)
 "Law & Practice Under the GATT and Other Trading Arrangements" (June 1992)
 "The North American Free Trade Agreement: Issues, Options, Implications (1992)
 "NAFTA and the Environment," in The North American Free Trade Agreement: Issues, Options, Implications (American Bar Association 1992)
 "Playing the Environmental Card," The Journal of Commerce, February 11, 1992
 "Are the Quotations Cooked? Let Juries Decide," The Wall Street Journal, September 27, 1990, and 1991
 First Amendment Law Handbook 157-59 (J. Swanson ed. 1991)
 "Tackling Japan's Wheat Market," The Journal of Commerce, August 5, 1991
 "Arbitral Proceedings Under the UNCITRAL Rules - The Experience of the Iran-United States Claim Tribunal," 22 G.W.J. Int'l L. and Econ. 804 (1990)
 "Resolving Disputes Under the Canada-US Free Trade Agreement: Comments on Chapter 18," in Living with Free Trade (Dearden, Hart, Steger eds.) at 31 (1990)
 "Establishment of an Arbitral Tribunal under the UNCITRAL Rules," 23 Int'l Lawyer 81 (1989)
 "The Canada-United States Free Trade Agreement," 23 Int'l Lawyer 37 (1989)
 "'Like Products' and Commercial Reality" in Antidumping Law and Practice (Jackson & Vermulst, eds.) at 287-95 (1989)
 "Trends in U.S. Trade Law" in 1987 Fordham Corporate Law Institute 513-26 (B. Hawk ed. 1988)
 "Justice Scalia and Federalism: A Sketch," 20 Urban Lawyer 353 (1988)
 "From the Ashes: A Report on Justice in El Salvador" (1987)
 "John Paul Stevens," Encyclopedia of the American Constitution (1986)
 "A Practical Guide to Certiorari," 33 Cath. U. L. Rev. 611 (1984)
 "Trade Regulation Law in the United States," 12 Kokusai-Shoji-Homu 238 (1984)
 "Countertrade and Trade Law," 5 J. Comp. Bus. L. 375 (1983)
 "Making the Most of Pennhurst's 'Clear Statement' Rule," 31 Cath. U. L. Rev. 439 (1982)
 "Toward a Center for State and Local Advocacy," 31 Cath. U. L. Rev. 367, 505 (1982)
 "Federalism and the Eleventh Amendment," 48 U. Colo. L. Rev. 139 (1977)
 "A Strict Scrutiny of the Right to Travel," 22 UCLA L. Rev. 1129 (1975)

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

While I have spoken publicly many times in the past 5 years, I have not delivered formal speeches with written remarks -- with one exception. I prepared formal, written remarks for my testimony to the 9/11 Commission; while not delivered precisely as written, a copy of the written testimony is attached. My other public remarks have principally concerned technology regulation (privacy, security, CALEA, etc.) and have been delivered either ex tempore or with PowerPoint slides adapted on the fly. I have attached a sample selection of PowerPoint slides used in my talks on these topics.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen with the expectation that my background and experience would be useful to the Department.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have a long history of involvement in many of the issues that the Department must address -- privacy, national security, law enforcement, technology, and law. I have helped to create a number of new institutions, both inside and outside government.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.
No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
No.
4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have personally represented a number of private clients that could have business before the Department. I will abide by all relevant Department ethics rules with respect to these former clients. This means that, unless authorized by 5 C.F.R. 2635.502, I will not, for one year from the last date on which I provided legal services to a former client, participate in any particular matter involving specific parties in which I know that the former client is a party or represents a party.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

I have testified before Congress on several occasions:

House Committee on Foreign Affairs, "The Central American Counterterrorism Act of 1985
(1985)

House Committee on Ways and Means, "United States-Canada Free Trade Agreement" (1998)
House Committee on Science, Subcommittee on Technology, "Digital Signatures" (1997)
Senate Banking, Housing and Urban Affairs Committee, "Proposals to Regulate Illegal Internet
Gambling" (2003)

House Committee on Energy and Commerce, Subcommittee on Telecommunications and the
Internet, "Law Enforcement Access to Communications Systems in a Digital Age"
(2004)

As partner of Steptoe & Johnson LLP, my practice has included a heavy policy element. In general, my representation of clients has focused on regulation of technology. In particular, this includes seeking export licenses and policy reforms for products containing encryption. (For example, I represented a consortium of companies in a federal rulemaking proceeding in 1996 which resulted in the transfer of encryption licensing jurisdiction from the Department of State to the Department of Commerce.) It also includes advocating on behalf of telecommunications companies and associations in the context of the Communications Assistance for Law Enforcement Act (CALEA) before the FCC, the FBI and the Justice Department. It includes advice and advocacy before Congress and agencies such as the FTC in the context of new spam, privacy, copyright, gambling, digital signature, and security regulation and legislation. I have occasionally also taken positions on issues relating to international trade law; in the 1980s, I testified to the constitutionality of certain dispute resolution mechanisms in the Canada-US Free Trade Agreement, and I recently reaffirmed those views in letters to Congress.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

In 1971, I paid a \$150 fine to a U.S. magistrate for misdemeanor battery in Oakland, California.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

AFFIDAVIT

Stewart Abercrombie Baker being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this _____ day of _____, 20_____

Notary Public

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the
Nomination of Stewart Baker to be
Assistant Secretary, Department of Homeland Security**

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Assistant Secretary of the Department of Homeland Security (DHS) for Policy?

ANSWER: I believe I was chosen with the expectation that my background and experience would be useful to the Department. In particular, I have a long history of involvement in many of the issues that the Department must address -- privacy, national security, law enforcement, technology, and law. Dating back to my time with the Department of Education, I have helped to create a number of new institutions, both inside and outside government. Accordingly, I believe these skills and experiences can be of service to the Department in developing the new policy organization.

2. Were any conditions, expressed or implied, attached to your nomination?

ANSWER: No.

3. What specific background and experience affirmatively qualifies you to be Assistant Secretary of Homeland Security?

ANSWER: I have devoted a large part of my public and private career to national security issues, with a heavy emphasis on national and domestic security policy. I was General Counsel of the National Security Agency from 1992 to 1994 and have served on numerous government advisory boards and panels relevant to national and homeland security in the years since 1994. I have also written extensively on homeland security issues.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Assistant Secretary of Homeland Security? If so, what are they and to whom have the commitments been made?

ANSWER: I have made no commitment regarding specific policies and principles I will implement, but I expect to be part of the team assembled by Secretary Chertoff and Deputy Secretary Jackson and to carry out the policies and principles adopted by that team.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

ANSWER: I have had an active law practice at Steptoe & Johnson LLP before joining government, so it will be necessary to recuse myself from particular matters affecting that firm and certain of its clients. Accordingly, I have consulted with the Department's Designated Agency Ethics Official (DAEO) and have signed an ethics agreement with recusal measures acceptable to the U.S. Office of Government Ethics. In accordance with that agreement, and with the assistance of the DAEO, I will recuse myself as appropriate under applicable law.

II. Role of the Assistant Secretary, Department of Homeland Security

6. What is your view of the role of Assistant Secretary of Homeland Security for policy?

ANSWER: As Secretary Chertoff has emphasized, DHS needs a strong central policy office to bring together DHS's policy development assets, the international affairs staff, significant strategic planning capability, and enhanced private sector liaison resources. Both as Assistant Secretary and, with the creation of a new central policy office, Under Secretary for Policy, I view my core obligation as supporting the Secretary in the development and implementation of consistent policies and priorities across the Department. As the chief policy officer of the Department, I expect my office to provide a link between Department-wide policy processes and the policy development processes of the Department's components. Our role will be to ensure close and effective coordination of policies at the component and headquarters level to provide unified guidance to the Secretary and the Administration on matters of homeland security. I believe we as a Department have a fundamental responsibility to the American public, our constituency, to develop policies which are effective, forward-leaning, and oriented to encompass both our present needs and future goals.

7. In your view, what are the major internal and external policy challenges facing DHS? What do you plan to do, specifically, to address these challenges?

ANSWER: The Department of Homeland Security was founded to give the highest priority to securing our Nation's borders and infrastructure from another terrorist attack while also preparing our first responder community, our citizens, and our Nation to respond in the event of an attack or other emergency. We certainly face other challenges and priorities as well. Hurricane Katrina has demonstrated that traditional emergency services are both a challenge and a priority. If confirmed, I intend to assist in the aggressive implementation of the priorities established by the Secretary in the Second Stage Review and elsewhere.

8. If confirmed, how would you communicate with DHS staff to receive their input on the activities and policies of the office?

ANSWER: I expect to communicate directly to the staff of the policy office from the start. My door is open, and I am eager to hear from anyone with a good idea. As for communicating with the staff of the Department as a whole, it is my understanding that the Department of Homeland Security (DHS) has a variety of formal and informal

communication channels in place to help foster effective, timely and accurate communication with DHS employees. These include e-mail, executive messages, the intranet, newsletters, video and web casts, employee town hall meetings, and face-to-face communication. I will be delighted to use all of these methods as appropriate. And more. If “podcasting” policy speeches is a useful way to communicate, for example, I will try that method of communicating as well.

III. Policy Questions

General

9. Secretary Chertoff has described policy, intelligence, and operations as three branches of a strategic approach to homeland security activities. His reorganization proposal, known as the “Second Stage Review,” includes changes in these three areas, including the creation of a new policy office and ultimately, should Congress approve, a new Directorate of Policy and Planning. Please answer the following questions with respect to both your immediate nomination to be Assistant Secretary for Policy, and to your potential elevation to Under Secretary for Policy.
 - a. How would you approach management of the policy office? Of the Directorate of Policy and Planning?

ANSWER: The purpose of this office is to ensure a close, centralized coordination of policy and planning for the Department. As such, it will be important to establish relationships and structures which will facilitate effective coordination while allowing flexibility for both the headquarters and component level policy entities to respond to the needs of component agencies as well as the Department as a whole.

- b. What specific steps will you take to ensure the policy office becomes the central point for policy development within DHS? The Directorate of Policy and Planning?

ANSWER: If confirmed, I expect to work closely with the Secretary and Deputy Secretary to identify and implement the Secretary’s vision for the Department. The confidence of the Secretary is the single most effective tool for making the policy office central to DHS’s policy development. Good lines of communication running to and from the component agencies are the other key tool. In general, I think there is a strong desire inside DHS to adopt and follow the Secretary’s policies, as long as those policies are communicated effectively and early in the decision-making process. If confirmed, my intent is to determine, and take, those and any other steps necessary to ensure coordination and centralization of policy-making functions at the headquarters level.

- c. What formal, structured processes and/or organizational changes would you put in place to ensure consistent policy implementation?

ANSWER: The overall structure of the office will be as set forth as part of the Second Stage Review. I have been impressed by the professionalism and work ethic of the many people who work in the offices that will become part of the policy office. Decisions on organizational and process changes will need to wait until I have been able to review their functions in more detail. If confirmed, I intend to construct the most effective means to carry out the mission of my office and will be happy to report back as those changes are made.

- d. Do you anticipate any barriers to effective coordination between the policy office or Directorate of Policy and Planning and the operational agencies?

ANSWER: No, I don't. The Secretary has clearly stated his vision for a strong, effective policy office. The office is a key part of the Secretary's vision for the second-stage of the Department; I anticipate a very close relationship with the policy elements of the operational agencies.

- 10. In describing the new policy office, Secretary Chertoff has said the office will perform "long-range strategic policy planning." At the same time, the Secretary has also suggested that the office will need to flesh out the details of policies being implemented now or in the near-term: "One of the main reasons I am arguing for a policy and a planning director is to give us the people who can take these policies and now really literally grind out the instructions very specifically about how we get there." (Testimony before the Senate Homeland Security and Governmental Affairs Committee on 7/14/05).

- a. What is your understanding of the role of the proposed policy office and Directorate with respect to long term policy guidance and more immediate implementation issues?

ANSWER: I anticipate that the Directorate will, in keeping with its role as the central organization for policy planning and strategy, be central to formulating long term strategy, including evaluating the success of policies that have been implemented recently. For example, as you know, in the Homeland Security Act, the Congress established the mechanism for long-range policy guidance through the Future Years Homeland Security Program (FYHSP). I anticipate that the directorate will utilize the FYHSP and similar planning strategies for the long term. At the same time, the strategy office needs to be able to evaluate whether new initiatives are succeeding, and to monitor the progress of those initiatives intensely to determine whether policies need a mid-course correction. If the Secretary asks the policy office to develop measures of success and to oversee particularly high-priority policies and programs, I expect it to do so with enthusiasm.

- b. What kind of resources do you envision the office will need to be effective? Do you anticipate a need for additional staffing beyond what is currently being proposed for the policy office and the Directorate?

ANSWER: I am confident that, given the importance that the Secretary and Deputy Secretary attach to this function, they will ensure that it has adequate resources. If

confirmed, I will evaluate its current staffing levels and other resources of the office to make sure that the office can do the job that is expected of it with planned resources.

11. Secretary Chertoff has proposed creating the policy office at the same time he is proposing to eliminate the Border and Transportation Security Directorate and the Emergency Preparedness Directorate. Eliminating these directorates means that a number of large operational entities such as Transportation Security Administration (TSA), U.S. Customs and Border Protection (CPB), Immigration and Customs Enforcement (ICE) and Federal Emergency Management Agency (FEMA) will now report directly to the Secretary and Deputy Secretary. Assuming all of these changes are approved, how do you assess the interplay between these operational entities and the policy office? Specifically, do you envision that the policy office will be called upon to assume some of the day-to-day oversight and coordination of these entities in addition to coordinating longer-term policy initiatives involving multiple entities within the Department?

ANSWER: If confirmed, I expect my role to include assisting the Secretary in ensuring that our policies appropriately reflect the priorities of the Department. Clearly, the operations and policies of the Department should be coordinated together to present a unified message from the Department. The office should provide policy guidance sufficiently early in the process to ensure policy implications are considered and evaluated for current and proposed operational procedures. I do not expect to be asked to provide daily oversight of these components.

12. As a result of his Second Stage Review, the Secretary has also proposed establishing a new Office of Operations Coordination, headed by a Director who would report directly to the Secretary.
 - a. What would you envision your relationship as Assistant Secretary for Policy with the Director of this office to be? As Under Secretary?

ANSWER: As a general rule, the line between operations and policy should be fairly clear and easy to honor. I expect to work with the director responsible for operations coordination in a constructive fashion. Based on my brief introduction to the Department, there is more than enough work for everyone, so I do not anticipate any difficulties in defining our relationship in the event that I am confirmed.

- b. How would you distinguish the type of planning to be undertaken in your office from what the Operations Coordination Office should be doing? Would there be any overlap?

ANSWER: In principle, operations is daily, immediate, and focused on carrying out policies that have already been established, while policy and strategic planning are focused on the long term and on emerging policy choices. While the two may meet in the middle, good lines of communication and the “plenty of work for everybody” principle should sort things out.

13. According to the Secretary, threats, vulnerabilities, and consequences should drive DHS policies and operations, as well as the way DHS is organized. How would you envision implementing this risk-based policy approach of threats, vulnerabilities, and consequence in DHS generally, and within DHS components specifically?

ANSWER: In general, the process of identifying the probability of the threat, the extent of the vulnerability, and the costs of a successful attack should inform all of the Department's policymaking. The devastating consequences of a nuclear or biological attack make defenses against those attacks high priorities even if they are less likely than other, low-tech attacks. The Secretary has articulated his vision that such a common-sense, risk-based approach should be incorporated into each program of the Department. If confirmed, I will certainly review each policy proposal with close attention to this risk-based approach.

14. If DHS is to look at everything in terms of threats, vulnerabilities, and consequences, then the Department's underlying assessments of threats, vulnerabilities, and consequences need to be accurate and reliable. What specific steps would you take to ensure DHS has the capacity to make comprehensive and accurate assessments of threats, vulnerability, and consequence? What policies should DHS pursue to improve its assessments?

ANSWER: I agree with the logic of the question, although improving the accuracy of threat assessments is only in part a policy matter. Determining how the policy office can best assist in meeting this goal will require study. If confirmed, I look forward to reviewing how DHS can most effectively assess threats, vulnerabilities, and consequences.

15. As part of the Second Stage Review, Secretary Chertoff announced a number of policy areas that will be the focus of new policy initiatives over the next six months: (1) preparedness; (2) border security, interior enforcement, and immigration processes; (3) transportation, supply chain security, and screening; (4) intelligence and information sharing; (5) stewardship of resources; and (6) realignment of the DHS organization.

- a. Are there additional areas where you would recommend policy initiatives over the next year?

ANSWER: I fully support the Secretary's vision for these near-term priorities and, if confirmed, will work to implement these initiatives. Combined with curing gaps in our emergency response, these certainly add up to a full policy plate. If it becomes apparent that additional priorities are necessary, I won't hesitate to tell the Secretary so.

- b. These planned initiatives will likely take the Department on paths that differ in some ways from existing DHS strategic planning initiatives and budget justifications. What additional changes would you propose in current strategic planning and budgeting presentations, such as objectives in the current DHS strategic plan and future years budget, to accommodate these initiatives?

ANSWER: I certainly believe that the new priorities which the Secretary announced will result in changes. All strategic plans change over time, and that fact doesn't reflect badly on the earlier plan. That said, the point of strategic planning and budgeting is to determine how particular priorities flow into long term resource allocations. Thus it isn't easy or prudent to predict exactly what the outcome will be. If confirmed, I look forward to participating in the process and reporting on the results.

- c. What milestones will you establish to measure progress in building a unified Department as the recommendations stemming from the Second Stage Review are implemented?

ANSWER: I believe it is important to establish the standards and metrics by which we assess our progress. In some respects, unfortunately, the best measures are negative and hard to quantify – for example, policy surprises avoided due to early coordination at the departmental and component level, conflicts avoided by early coordination, and the like. If confirmed, I will work with the senior management to seek the most effective milestones to hold the policy office accountable.

- 16. There are a number of national strategies guiding homeland security and national preparedness that are in effect, such as the National Strategy for Homeland Security, the National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, and the Maritime Strategy for Homeland Security. While some are new, many are now two to three years old. In addition, the Department of Defense (DoD) recently issued a new Strategy for Homeland Defense and Civil Support. Homeland Security Presidential Directives (HSPD) provide further direction for homeland security. Some argue that the directives have been necessary because of shortfalls in national strategies or specific department strategic plans or policy direction.
 - a. What specific policy changes, if any, do you believe might be necessary in the parts of older national strategies dealing with homeland security and/or domestic national preparedness that DHS might recommend to the Executive Office of the President? What would be your rationale for such changes?

ANSWER: As a general matter, DHS needs to continually re-examine and refine these documents and to maintain the flexibility to adapt to a changing threat environment. I am not in a position to offer specifics on how the older national strategies should be revised. If confirmed, however, I will review them to determine how we are meeting our responsibilities. I will certainly advise the Secretary about any needed changes.

- b. How would you ensure that the Strategies' goals and objectives under the jurisdiction of DHS are understood and timely implemented? What about HSPD requirements?

ANSWER: If confirmed, I will closely review the Strategies and HSPD requirements pertinent to DHS. And I look forward to helping to develop appropriate mechanisms to ensure that DHS tracks implementation and compliance with these requirements.

- c. What long range planning process would you implement to guide DHS strategies beyond the near term and to take actions that address the evolving strategies of our adversaries?

ANSWER: As noted above, the Congress has provided a mechanism for long range planning through the Future Years Homeland Security Program. If confirmed, I look forward to participating in the use and improvement of this important tool.

17. The current Homeland Security Strategy, completed in the summer of 2002, sets a general framework for our homeland security efforts, but has been criticized by some as too general and lacking clear priorities and deadlines for action. If confirmed, what would your plans be with respect to updating and strengthening this strategy? Please be as specific as possible.

ANSWER: Certainly any strategic plan will of necessity, over the passage of time, require revision and change. Although I have not studied this strategy in detail, if confirmed, I will do so to determine what changes and updates, if any, should be made to this strategy to ensure it effectively meets the current needs and goals of the Department.

18. As discussed in a September 29, 2004 colloquy between Senators Lieberman and Collins, with respect to the Department of Homeland Security Financial Accountability Act (H.R. 4259, now P.L. 108-330), the updated Homeland Security Strategy should incorporate more rigorous risk analysis and set clear priorities and deadlines, as well as achieve greater integration of diverse federal strategies related to terrorism.

- a. What aspects of the Homeland Security Strategy, if any, do you believe need improvement?

ANSWER: As noted above, I am reluctant to propose specific changes to the Strategy without giving that Strategy the same attention and coordinated review that it received when it was developed. I will certainly, if confirmed, review the Strategy and determine what changes would be necessary to ensure that it reflects the clear priorities of the Secretary, the Department and this Congress.

- b. If confirmed, do you commit to make updating and strengthening the Strategy a critical priority and to comply with Congressional directives on this matter?

ANSWER: See 18a.

19. The proposed reorganization of the Department does not include merging ICE and CBP, as some experts have proposed. By eliminating BTS, a common directorate that included

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both ICE and CBP, and having both agencies report directly to the Secretary, the reorganization arguably moves in the opposite direction and creates an additional separation between the agencies. What, in your opinion, are the advantages and disadvantages of merging ICE and CBP?

ANSWER: It is my understanding that the Secretary's decision not to merge ICE and CBP was coupled with other important proposed changes within the Department that will ensure that these two components are not only better coordinated with each, but also with the entire Department. Secretary Chertoff's proposed reorganization -- which includes not only the elimination of BTS but also the creation of entities that will approach the mission to secure the Homeland with a Department-wide view -- will enhance the Department's ability to take a comprehensive approach to critical problems like border security, interior enforcement, and counter-terrorism. The proposed creation of a DHS Policy Office, an Office of Operations Coordination, and a more robust Intelligence office will ensure that the Department approaches the Homeland Security mission with an eye towards maximizing all of the Department's resources. I believe that these changes, along with the fact that ICE and CBP will now have direct reporting relationships to the Secretary, will reduce stove-piping and ensure that their respective missions are integrated, where appropriate, and effectively coordinated. If confirmed, I look forward to working with the heads of both ICE and CBP to improve coordination and cooperation between these agencies.

20. Implementing the recommendations of the Second Stage Review will require sustained leadership and strategic planning. GAO, among others, has identified strategic planning as one of the critical success factors for new organizations. In a report earlier this year (GAO-05-300), GAO highlighted changes DHS could make to improve its strategic planning, including stakeholder consultation and better articulating the relationship between annual and long-term goals. What changes, if any, would you propose in the Department's strategic planning process to address these concerns?

ANSWER: Although I have not thoroughly studied the report, it is my understanding that the GAO report calls for several changes, including earlier and more effective consultation with our stakeholders as well as additional strategic planning resources. If confirmed, I will certainly undertake a close review of the current strategic planning process and will commit to responding constructively to the suggestions and criticism in this report and any other studies which reflect concerns with the current strategic planning process.

21. DHS's most recent strategic plan calls for the enforcement of trade and immigration laws, promising facilitation of free commerce and the flow of immigration and travel into the United States. However, achieving security while facilitating free commerce, lawful immigration, and travel requires difficult policy and operational choices. What planning and policy development principles would you propose to guide addressing the tension between security and the free flow of trade and people?

ANSWER: I agree. There is often a tension between the values described, and DHS's job is to find a proper balance among them. This is where a risk-based assessment is particularly valuable. It is among the principles that would guide my approach to policy development if I am confirmed. In the long run, imposing regulatory burdens that are plainly not commensurate with the threat they avoid will discredit the Department's efforts; we need to avoid that. At the same time, 9/11 showed that even a remote risk can sometimes come to pass with devastating results. We need to show imagination and have the flexibility to adapt to new intelligence and changing threats.

22. In discussing the results of the Second Stage Review, Secretary Chertoff has emphasized the need to strengthen information sharing and partnerships.

- a. How would you fully include other federal agencies, state and local governments, international partners, and the private sector in identifying policy issues and options and taking part in the final policy decisionmaking and the revision of existing policies?

ANSWER: I look forward to working closely with all of these critical partners in the Department's mission to secure the Homeland. I will solicit their advice and participate in interagency meetings and discussions. In addition, I know that interagency task forces and working groups have been established to ensure that cross-cutting problems are approached with a view towards leveraging all of the Federal Government's resources. If confirmed, I look forward to participating in these forums and to working closely with my counterparts. I will also meet regularly with the Department's critical State, local, Tribal, and private sector partners. I know that so much of what the Department does hinges on strong and interactive working relationships with these partners, and I will make every effort to continue to enhance those relationships.

- b. What specific plans would you have for the Homeland Security Advisory Council as part of homeland security policy development?

ANSWER: It is my understanding that the Homeland Security Advisory Council (HSAC) has proven to be an extremely valuable asset to the Secretary. I have been impressed by the reports produced by the Council, which has been willing to roll up its sleeves and do its own work in a way that is all too uncommon in Washington. If confirmed, I look forward to forging a strong relationship with the HSAC and to incorporating their advice into the work of the Department.

- c. How would you ensure that other DHS directorates and offices, such as the proposed new Office of Legislative and Intergovernmental Affairs, create policy consistent with a unified policy planning approach?

ANSWER: If confirmed, one of my principal responsibilities will be to ensure consistency within the Department on its policy decisions. I do not expect to have to take special action to ensure that the new Office of Legislative and Intergovernmental Affairs acts in a fashion consistent with unified Department policy and planning. The legislative

and intergovernmental offices have been particularly enthusiastic about working with the new policy office. I will work closely with the new office to ensure that I receive valuable policy input both from Members of Congress and from government officials outside the Executive Branch.

- d. What role would your Directorate play in setting information sharing policies in contrast to the role that the Chief Intelligence Officer might play?

ANSWER: No one office can make information sharing a success; the effort requires cooperation among intelligence, intergovernmental, operational, information systems, and policy offices. I will work cooperatively with the Chief Intelligence Officer, as well as with all of the other relevant components, to ensure that the Department develops its important information-sharing policies, roles, and responsibilities, with an eye towards enhancing information-sharing within the Department and federal government, as well as with our critical State, local, Tribal, and private sector partners.

- e. How would you work with intelligence and information sharing entities outside of DHS, such as the National Counter Terrorism Center, to set policies ensuring rapid and accurate information flows to those requiring the information?

ANSWER: If confirmed, I look forward to developing policies that will support the vision for the new Information Sharing Environment (ISE). I believe that enhanced information sharing with our Federal partners, including the DNI, DOJ, and NCTC, will be critical to executing the Department's mission to secure the Homeland. At the same time, we must always be sure that appropriate safeguards are in place to protect national security, privacy, and civil liberty interests.

- f. What policy safeguards are necessary to ensure intelligence and information sharing operations comply with privacy and civil liberties requirements?

ANSWER: I believe that the Department's policies must reflect the importance Americans place on protecting our fundamental liberties and privacy. Privacy and security are not mutually inconsistent. Where possible, we should seek policies and technical solutions that improve both security and protections for privacy. If confirmed, I will carefully approach all policy decisions concerning intelligence and information with an eye towards protecting privacy and our civil liberties.

- 23. What will be your role in determining policies of functional offices, such as the Office of the Chief Financial Officer, Chief Information Officer, and Chief Human Capital Officer? What challenges do you believe could arise in working across these divisional and departmental lines and how will you bridge these gaps?

ANSWER: The role of the central policy officer for the Department, as noted above, is to be involved sufficiently early in a decision-making process to provide effective advice on the policy implications of decisions by our operations and functional offices. I certainly believe that a collegial environment is vital to the departmental decision-making

process and, if confirmed, look forward to establishing that relationship and working together with my colleagues to overcome any obstacles to working across the divisional and departmental lines.

24. CBP is responsible for screening and inspecting goods crossing our borders or arriving in our seaports. Currently, roughly 5% of all cargo containers arriving at a seaport are inspected by CBP. However, CBP states that 100% of all cargo containers are screened to determine their risk level, and 100% of all containers determined to be high risk are inspected - either physically, or using non-intrusive detection equipment. However, according to a recent CQ Homeland Security article ("Cargo Inspection Data Needs Work, Report Says," August 2, 2005), some security experts believe DHS should move towards inspecting 100% of all U.S.-bound containers, not just those identified as high risk. Currently, a prototype system named "Integrated Container Inspection System" (ICIS) for inspecting all containers entering a port is being tested at the port of Hong Kong.

- a. What do you believe should be the strategy for screening and/or inspecting U.S.-bound containers?

ANSWER: This is an area that requires a risk-based assessment. For example, how much additional security would be provided by additional inspections, and at what cost to trade efficiency? Unpacking every container, even those sealed by a trusted supplier in a relatively terrorism-free country and controlled by a responsible carrier, would have great costs and might not improve security at all. The decision about what to inspect and in what detail depends on a risk assessment based on intelligence and good judgment. The complexities and dynamic nature of the containerized cargo supply chain probably means that there is no one "silver bullet" solution. The central task is to identify those containers that are most likely to pose a terrorist or other threat. These high risk containers should then be subject to physical or non-intrusive inspections, preferably prior to departure for the United States. That doesn't mean that the current mix of intelligence-based screening and inspection is the right one; I will certainly examine this question with an open mind and will not hesitate to suggest modifications in the assessment and inspection process.

- b. The Container Security Initiative (CSI) has CBP inspectors working with foreign customs officials to inspect some high risk containers. The Hong Kong prototype (ICIS) has private sector representatives inspecting containers using non-intrusive inspection equipment. In both cases, CBP officials are able to review the results of the inspection. How much could/should we rely on foreign governments to screen and/or inspect cargo containers? How much could/should we rely on the private sector to inspect cargo containers?

ANSWER: I'm delighted to see the Hong Kong terminal operators and SAIC showing such initiative in exploring new models for container security. Close partnerships with both foreign customs and the private sector will remain critical to improving security and facilitating trade. If confirmed, I will be committed to further strengthening these

relationships and exploring new and innovative ways in which both can contribute to our layered approach to security.

- c. How should the Department determine the percentage of U.S. bound containers to be inspected? Who is responsible for determining whether it is feasible to inspect 100% of containers without unduly slowing the flow of commerce?

ANSWER: I am reluctant to identify a particular percentage of containers that need to be inspected; I'm not sure that's the best way to address the challenges of securing international commerce. Instead, I am inclined to think that the Department should continue to strive to identify the relative risk of all containers and then efficiently inspect those that are deemed to pose a higher risk. This process requires good intelligence and good judgment, however, and those should be the subject of continuing scrutiny. At the same time, a certain number of truly random inspections may also be appropriate simply to prevent terrorists from gaming our system. I will approach such questions with an open mind. It is clear that questions of the effectiveness and efficiency of our supply chain security program involve significant policy, operational and technical considerations and therefore require the input of all involved federal agencies as well as our private sector partners. If confirmed as Assistant Secretary for Policy, I will ensure that all of these factors are taken into consideration on this and other questions.

Transportation Security

25. The Transportation Security Administration (TSA) has statutory responsibility for security in all modes of transportation. TSA has been criticized for focusing too much of its time and resources on aviation at the expense of other transportation security issues.

- a. Is it your view that the current priorities are appropriate? Please explain.

ANSWER: Much of the focus on aviation was driven by Congressional mandates arising from the shock of 9/11 and the many gaps in aviation security that it illuminated. It's certainly fair to ask whether a different set of priorities should predominate in the future. Clearly, the U.S. transportation system is a complex intermodal network that includes people, cargo, and everything necessary to move them, and the Transportation Security Administration (TSA) is responsible for protecting the security of this entire network. I have no doubt that the Agency has taken this responsibility seriously and has worked diligently to protect the entire transportation system. Nonetheless, we should always be open to reconsidering the focus of our efforts based on experience and new information. If confirmed, I will certainly work closely with TSA in the most effective means to implement current priorities, as well as to assist in making changes where appropriate.

- b. What should the Department's priorities be in setting policy for transportation security?

ANSWER: In announcing the results of the Second Stage Review, Secretary Chertoff clearly delineated the priorities of the Department going forward, including those in the area of transportation security. As he noted, the creation of better systems to move people and goods more securely and efficiently was a core objective in the founding of DHS -- and it remains so today. I wholly support the Secretary's vision for transportation security including enhancement of transit safety, strengthening aviation security, improving passenger identity screening, and supply chain security management.

26. In response to a concern that DHS lacked a coordinated and comprehensive transportation security strategy, the Intelligence Reform and Terrorism Prevention Act of 2004 required that the Department complete a National Strategy for Transportation Security ("Strategy") by April 1, 2005. The Intelligence Reform and Terrorism Prevention Act of 2004 also required that the Strategy be updated no later than April 1 every other year, beginning in 2006. DHS failed to meet that statutory deadline, and has repeatedly delayed finalizing the Strategy and sharing it with Congress.

- a. Do you believe these delays are limiting DHS' ability to effectively address the security of all modes of transportation?

ANSWER: I understand that the NSTS has been delayed some months in order to draw together and refine multiple related activities. I am told that the NSTS continues to be a top priority at TSA and DHS, and TSA has redoubled its efforts to complete this comprehensive document. Clearly the Department is committed to developing a plan which will be as timely as possible, but which also effectively addresses this responsibility.

- b. Do you agree is it important to review and update as necessary the Strategy to ensure its utility?

ANSWER: Although I am unfamiliar with the contents of the Strategy, I certainly agree that this or any other Strategy should be updated as necessary to maintain its effectiveness.

- c. If confirmed, will you ensure the Strategy and any transportation modal plans are updated as required by law?

ANSWER: If confirmed, I will certainly work with TSA and other Departmental agencies to ensure they receive all necessary input from our office in a timely fashion to meet their obligations to the Department and to Congress.

27. One of the primary obstacles preventing further implementation of the Transportation Worker Identification Credential (TWIC) is that DHS has not made policy decisions – such as whether the program ought to be federally managed or federally regulated – necessary to provide direction for the program. For example, access control to transportation sites is a critical element of their security, but many facilities are reportedly waiting to improve access control systems until DHS makes the necessary policy

decisions. If confirmed, would you work with TSA to expeditiously address the remaining policy questions and to fully implement the TWIC program?

ANSWER: Clearly, the Transportation Worker Identification Credential (TWIC) program is important to the Transportation Security Administration (TSA) and to the Department of Homeland Security (DHS) as a whole. I am told that the implementation plan for the TWIC program focuses initially on maritime workers as the primary TWIC population and that the results of the prototype program, and the subsequent TSA recommendation for implementation, will certainly affect the timeline for the ultimate implementation of TWIC. I also understand that the Department is conducting a comprehensive review of all credentialing programs within the Department, and this review may affect the full implementation of TWIC. That said, if confirmed, I look forward to learning more about the program itself and examining how best to achieve the goals it sets forth.

28. At the Committee's Second Stage Review hearing, Secretary Chertoff said that, although aviation and non-aviation security "each require the same degree of attention, the particular way in which we pay attention may be a little bit different. Aviation, for example, is a closed system. People enter and depart in a relative fixed number of points. . . . And so our configuration in terms of security is one that is guided and molded by the existing nature of the system. I've ridden the New York subways. I've ridden the Washington subways. To have magnetometers would be to destroy the system itself. So we have to think about how we make the system work with security and efficiency. . . . [W]e have to look at the whole range of threats. Obviously even a bombing that kills 30 or 40 people in a subway is a serious matter. But a biological incident in the subway or a chemical incident in the subway, which could have the capacity of killing many, many more people and in fact rendering the subway unusable for a substantial amount of time, would be a matter of significantly worse consequence."

- a. What is your view of the balance in funding and resource priorities between aviation and transit that Secretary Chertoff is describing?

ANSWER: Funding and resource priorities in aviation and transit are driven by a variety of factors. The nation's transportation system, as you know, is vast and complex, and very few of its assets are owned or controlled by the Federal Government. The diversity and expansiveness of the transportation system presents inherent security challenges. Each of the major transportation modes has unique characteristics, operating models, responsibilities and stakeholders. For this reason, the Federal government must focus resources on the basis of consequence, threat and vulnerability assessments, and the prioritization of risks. This concept is the foundation of a risk-based, threat-managed methodology.

- b. In your view, should the fact that mass transit is not a "closed" system like aviation weaken the federal government's role in the protection of Americans who use mass transit?

ANSWER: I did not interpret the Secretary's remarks in the same way. Because mass transit is not a closed system, we can't expect to do exactly the kind of screening we do in public aviation. The fact that mass transit is not a closed system doesn't necessarily weaken the federal government's role in protecting mass transit passengers, but it does pose a fundamental challenge – what can be done to protect mass transit that won't make mass transit unusable? As for the question of the federal role, the responsibility of securing our nation's transportation systems is a shared one, and the size of the federal share varies. Only in the area of aviation security is the Federal responsibility truly direct and exclusive. In other cases, the federal government has focused on assisting State, tribal, local, regional and private partners who have more direct responsibilities (and sometimes better ideas) for securing our transportation systems. Federal assistance to these entities spans the spectrum of security, from intelligence and information sharing and awareness through prevention, response and recovery to a potential terrorist attack in the United States.

New resources for public transportation must be weighed against other pressing needs to ensure we are optimizing the use of Federal resources to the highest risks and security needs. I certainly believe the President's FY 2006 Budget reflects the Department of Homeland Security's (DHS) most critical needs.

29. Do you have a view as to the direction that R&D in mass transit security technology should be heading? Are you satisfied with the Department's current policy regarding the use of canine units to detect explosive materials? Should the government be developing new technologies to detect explosives? Are there additional technologies that the Department should be developing and/or deploying to help secure our mass transit systems?

ANSWER: If confirmed, I look forward to learning more about the current direction of the Department with respect to R&D as a whole, including in the area of mass transit technology. I am open to the use of new technologies in enhancing our homeland security efforts and look forward to learning more about the current technologies, as well as the role new technologies may play.

30. Would you be supportive of the Department's coordination of conferences between American and foreign transit security officials to learn more about what other cities and governments are doing to secure their transit systems?

ANSWER: Yes.

31. Security experts, including Richard Falkenrath, have discussed the possibility of terrorists attacking a rail car carrying extremely hazardous materials, such as chlorine. There have been proposals to require railroads to re-route cars carrying extremely hazardous materials around certain high threat corridors, subject to some exceptions.

In your view, does DHS have authority to re-route rail cars carrying hazardous materials? Should DHS have additional authority to regulate transportation of hazardous materials by rail? What factors should DHS consider when making a determination as to whether it should re-route rail cars carrying extremely hazardous materials around certain high threat corridors?

ANSWER: There's no doubt that this is a very serious concern. The real question is whether re-routing is the best solution to the problem. I understand that a DHS / DOT working group is studying many aspects of the problem. The group is conducting studies of rail corridors in high-threat urban areas; ways to enhance the ability of rail cars to withstand attack; improving compliance with security plans; developing protocols for protective measures; establishing communication standards on rail car tracking systems; and requiring improvements for rail car security during storage. If confirmed, I will certainly seek to learn more about ways to address this serious issue.

Grants

32. Do you agree that, even if DHS is able to conduct sophisticated risk assessments, it is not possible to predict with certainty where terrorists may strike next? If, in fact, it is not possible to know with certainty where terrorists will strike - if such predictions are at least as much art as science - what are the implications for homeland security grant funding for states and localities? In particular, do you agree that this lack of predictability argues for a minimum level of funding for all states in order to ensure a basic level of preparedness nationwide?

ANSWER: I certainly believe that terrorists are not predictable, that preparedness is a national goal, and that an effective national homeland security strategy should encourage a basic level of preparedness nationwide. As you know, the Department is finalizing the National Preparedness Goal, which will allow DHS to focus funding to address essential capabilities required by all types of communities. I support that approach.

33. For the purpose of selecting cities to receive Urban Area Security Initiative (UASI) funding, DHS has adopted a combination of metrics to estimate the risk a locality faces. Changes in the methodology from year-to-year has resulted in significant changes in funding decisions that may or may not necessarily reflect changes in actual risks faced by those localities. What is the appropriate process for validating these metrics? In other words, given that in the vast majority of cases where an area is deemed at risk for UASI purposes there will, thankfully, be no attack, how can DHS determine whether the methodology it has adopted in fact accurately measures risk?

ANSWER: I understand that the Urban Areas Security Initiative (UASI) funding is awarded on the basis of risk and need, with numerous factors being taken into consideration to determine the appropriate levels. If I am confirmed, I will carefully review the process used to determine the UASI awards and will consider complaints about the accuracy and fairness of the metrics.

Immigration

34. Functions that were previously consolidated in the Immigration and Naturalization Service are now divided among three DHS bureaus - Immigration and Customs Enforcement, Citizenship and Immigration Services, and Customs and Border Protection. Officers in all of these bureaus are responsible for applying the provisions of the Immigration and Nationality Act. How will you ensure that there is uniform interpretation and application of the complex body of immigration law implemented by DHS?

ANSWER: If confirmed, I will seek to create a unified policy office concerned with immigration matters. The office will have ties to and responsibility for each of the major bureaus concerned with immigration. Working with the DHS General Counsel to ensure uniform interpretation of the immigration laws and a uniform policy, the office should be a place where fully coordinated immigration policy initiatives are developed

35. What role will the policy office play in coordinating and setting immigration policies for the three DHS agencies that implement immigration law? What role would a Directorate of Policy and Planning play?

ANSWER: Whether as an Assistant Secretary or Under Secretary, this new office will have a central role in assisting the Department's efforts to speak with one voice concerning immigration policies. I look forward to working closely with the existing policy elements within each of the components to build a dynamic, coordinated, policy making structure for all policy matters affecting DHS, including immigration, which ensures the equities of each of our agencies is reflected in the Departmental decisions.

36. What role will the policy office, and potentially the Directorate of Policy and Planning, play in setting Administration policy with respect to immigration reform?

ANSWER: Whether as an Assistant Secretary or Under Secretary, this new office will have a central role in assisting the Department's efforts to speak with one voice concerning immigration policies. To the extent requested by the Secretary and Deputy Secretary, the Assistant Secretary or Under Secretary will also participate in the interagency process as Administration policy is hammered out.

37. What are your views on comprehensive immigration reform?

ANSWER: In the long run, only comprehensive reform will work. I cannot pretend to have studied in detail particular proposals for comprehensive reform, but if confirmed, I intend to do so, and to participate in the development of comprehensive reform policies.

38. There are approximately 8 to 10 million undocumented aliens in the United States, most of whom came here to work, and have found jobs. Do you believe that this population will be attracted to an immigration program that offers temporary work visas to

undocumented aliens, but ultimately requires them to return to their home countries? Please explain your answer.

ANSWER: I strongly support the goals of the President and the Secretary for immigration reform. As the Secretary indicated in his second stage review speech, there is a need to strengthen border security and interior enforcement, as well as improve our immigration system. I firmly support the Secretary's view that we must find a balance and cannot rely on a single approach. I am not in a position to judge the details of particular proposals.

39. In 1996, the Department of Justice's Office of Legal Counsel ruled in a published opinion that state and local police lack legal authority to stop and detain an alien solely on suspicion of civil deportability, as opposed to a criminal violation of the immigration laws or other laws; that ruling was reiterated in November of 2001. In 2002, then Attorney General John Ashcroft asked his Office of Legal Counsel to look into the matter again, and OLC reportedly decided in spring 2002 that state and local police do have this "inherent authority."

Secretary Chertoff has stated that state and local law enforcement play a critical role in our homeland security mission, and are likely to encounter immigration violators and foreign-born criminals and immigration violators in the course of their duties. He also acknowledged that the Department needs to look carefully at the issue of whether and how local police should be involved in immigration matters.

- a. What are your views on expanding the use of local police in immigration matters?

ANSWER: I agree with Secretary Chertoff's position on this issue. State and local law enforcement should, and does, play a critical role in the homeland security mission. State and local law enforcement officials are likely to encounter foreign-born criminals and immigration violators during the course of their duties, and DHS should help these officials in deciding how to handle violators. I also agree with the Secretary's view that we need to look carefully at whether and how local police are involved in immigration matters and would want to further review this matter if I am confirmed.

- b. During his confirmation proceedings before this Committee, Secretary Chertoff acknowledged the "legitimate concerns" of security experts and law enforcement personnel who are opposed to involving local law enforcement in policing immigration violations. Among these concerns is that undocumented aliens might be reluctant to report crimes or come forward with important information. Please describe your own views of these concerns. Do you think those concerns outweigh any advantages to expanding the role of local law enforcement in policing immigration violations? Please explain your answer.

ANSWER: I certainly agree with Secretary Chertoff that these are legitimate concerns and warrant further examination and study. If I am confirmed, I will review this issue.

- c. What role will the policy office, and potentially the Directorate of Policy and Planning, play in setting policy with respect to the role of state and local law enforcement in policing immigration violations?

ANSWER: DHS has principal responsibility for setting immigration policy, including policy regarding the role of state and local law enforcement agencies. If confirmed, I would expect to play a significant role in helping the Department set that policy.

40. What role will the policy office, and potentially the Directorate of Policy and Planning, play in setting policy with respect to asylum law and asylum seekers?

ANSWER: DHS has principal responsibility for setting immigration policy, including policy regarding asylum and refugees. If confirmed, I would expect to play a significant role in helping the Department set that policy. To assist in this effort, the Secretary has announced that he will create within the new policy office a Senior Official for Refugee and Asylum issues. If confirmed, I look forward to establishing this position and seeking to make it an effective and powerful part of the Department's immigration policy-setting process.

41. On February 8, 2005, the US Commission on International Religious Freedom released a Congressionally authorized report on how expedited removal procedures were affecting asylum seekers. Among its findings, the Commission reported:

- In approximately half of observed inspections, inspectors failed to inform aliens subject to expedited removal that they may ask for protection if they have a fear of returning home, despite the requirement in DHS regulations required that this information be read to the aliens.
 - In 15% of observed cases where an alien expressed a fear of return, the DHS Inspector failed to refer the alien for a credible fear interview; instead the aliens were returned, in spite of the fact that they may have had a legitimate claim for asylum.
 - In one port of entry, immigration officers were observed improperly encouraging asylum seekers to withdraw their applications for asylum.
 - Asylum seekers are detained by DHS in harsh maximum security correctional facilities, and are often housed in the same cellblocks or in the same cells as convicted criminals. Many of the detainees, who often had been tortured or persecuted in their home countries, were further traumatized by the conditions of confinement, and some said that the conditions were one of the factors that they led them to terminate their applications for asylum.
- a. Do you view the Commission's findings as representing serious problems and serious violations of the rights of asylum seekers?

ANSWER: The Department welcomes input from the Commission and others on important issues related to refugee and asylum law and policy. Consistent with the Commission recommendations, the Department has, of course, recently announced the creation of the senior officer for asylum and refugees within the proposed policy directorate. I look forward to working with the Commission and further discussing these issues.

- b. What, if anything, would you and the policy office, and potentially the proposed Directorate of Policy and Planning, do to help the Department address these problems?

ANSWER: If confirmed, I look forward to working with the Senior Refugee and Asylum Officer and the immigration policy office to address these issues.

42. CBP Commissioner Robert Bonner recently praised the work of citizen patrols along the U.S.-Mexican border. He specifically thanked the Minutemen for acting responsibly, and spoke of forming a volunteer auxiliary group. The day after Commissioner Bonner's comments, a DHS spokesman asserted that "there are currently no plans by the Department of Homeland Security to use civilian volunteers to patrol the border."
- a. Do you believe DHS should encourage the formation of voluntary citizen patrols along the U.S.-Mexican border? Please explain your answer.

ANSWER: I do not. The Department should be very cautious about the idea of using citizen volunteers to patrol the border.

- b. Do you believe there are any safety concerns associated with citizen patrols?

ANSWER: Safety concerns are a reason for caution about the idea.

- c. What would be your role in setting policy for DHS with respect to the use of citizen patrols?

ANSWER: DHS has principal responsibility for setting immigration policy, including policy regarding citizen patrols. If confirmed, I would expect to play a significant role in helping the Department set that policy.

43. In the three years following September 11, 2001, refugee admissions fell far below the authorized ceiling of 70,000 refugees established for each of those years. The consultation document that the Bush Administration provided to Congress on proposed FY2004 refugee admissions stated that "new procedures instituted by the Department of Homeland Security and the FBI are, after many difficulties, streamlining security processing in a meaningful way." Nevertheless, admissions in 2004, while greater than in the previous two years, still ended up being well below the authorized level of 70,000.

- a. What role will the policy office, and potentially the Directorate of Policy and Planning, play in setting policy with respect to the processing of refugees for resettlement in the U.S.?

ANSWER: DHS has principal responsibility for setting immigration policy, including policy regarding asylum and refugees. If confirmed, I would expect to play a significant role in helping the Department set that policy.

- b. What, if anything, do you think DHS should do to help ensure that the number of refugees resettled in the U.S. reaches the ceilings authorized by the President and Congress?

ANSWER: If confirmed, I will work closely with the senior officer for refugee and asylum issues and the immigration policy office generally to determine the approach to this issue.

Renditions

- 44. There have been reports that the United States has detained or seized foreign nationals suspected of terrorism and rendered them to foreign countries where they have been imprisoned and tortured. ICE officials reportedly have assisted in some of these renditions. On the March 4, 2003 edition of ABC's World News Tonight, you appeared in a story on the issue of torture and stated "We turn these people over to intelligence agencies that don't feel the same qualms about torture as we do."

- a. The quoted statement suggests that you believe that the US Government has rendered individuals to other countries where the government had reason to know the individuals would be tortured, and in the context of the World News Tonight story, it further suggests that you believed the US Government conducted the renditions for the purpose of having them tortured. Did you so believe? On what did you base your belief?

ANSWER: It is important not to overinterpret my remarks. I did not intend to suggest that the US Government has conducted renditions for the purpose of having individuals tortured or that the US Government turns people over to intelligence agencies with the intent that they be tortured. I understand that the United States recognizes its obligation not to "expel, return ... or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture". United States policy is not to transfer persons to countries where the United States believes it is "more likely than not" that they will be tortured.

- b. Do you believe it is lawful to render foreign nationals to countries where there is reason to believe they will be tortured?

ANSWER: Without pretending to be an expert in this field, I understand that, under U.S. law, persons may not be transferred to countries where the United States believes it is "more likely than not" that they will be tortured.

- c. In your position as General Counsel to the National Security Agency (NSA) or in any other position you have held in the past, have you been consulted regarding or been involved in discussions about the legality or appropriateness of rendering individuals to other countries? If so, please describe the circumstances, including the country involved and the result of the discussion.

ANSWER: I was not consulted as General Counsel of NSA or otherwise on the legality or appropriateness of rendering individuals to other countries.

- d. If confirmed, what role do you believe you or your office will play in helping form policy governing DHS's involvement in proposed renditions?

ANSWER: I would anticipate that the office, as a central policy voice for DHS, will certainly provide input to the Administration on all policy matters, including policies affecting administrative removal of individuals claiming fear of torture.

- e. If you are consulted with respect to proposed renditions involving DHS, what factors would you advise be considered by Department officials considering proposed renditions? Would you advise them to consider whether the nation to which the suspect is proposed to be rendered has a record of abusing or torturing those in its custody? Would you advise Department personnel that, before they agree to participate in a rendition, they first determine the likelihood that the suspect to be rendered would be tortured? If so, how would you advise them to make that determination? Do you believe it is sufficient to make a rendition lawful if a country that has a known history of torturing its detainees tells the US that it will not torture the person subject to the rendition?

ANSWER: Given the complexity and significance of the issue, I am reluctant to take a position without having studied the question in detail and received the benefit of arguments on all sides of the question. If confirmed I will look closely at the question of rendition and at how the Department can best meet our international obligations while keeping America safe and secure.

Privacy, Civil Rights, and Civil Liberties

- 45. The nature of the mission of the Department of Homeland Security makes it critical to incorporate safeguards for privacy, civil rights, and civil liberties into virtually all of the Department's policies and programs. Recognizing the importance of considering and achieving the necessary balance between protecting our security and preserving our liberties, Congress included in the Department of Homeland Security an Officer for Civil Rights and Civil Liberties, as well as a Privacy Officer, to provide input as policies and

programs are developed and implemented that may have potential impacts on privacy, civil rights and civil liberties.

- a. If confirmed, how would you evaluate and to what extent would you weigh civil liberties, civil rights, and privacy concerns when developing Department policies and reviewing their implementation? With respect to policies that could impact on privacy, civil rights and civil liberties, would you assess the impact of each proposed Department policy on privacy, civil rights and civil liberties prior to adopting the policy? How would you seek to achieve the necessary balance between protecting our security and preserving our liberties?

ANSWER: Secretary Chertoff has repeatedly made clear that the Department be vigilant in protecting Americans' fundamental liberties and privacy. If confirmed, then, I would certainly ensure that my office thoroughly reviews the impact of any policy under consideration with respect to privacy, civil right and civil liberties.

- b. Are there specific programs or policies regarding which you believe the Department needs to be particularly sensitive to civil liberties, civil rights, and privacy concerns?

ANSWER: As noted above, I take seriously the mandate of the Department and the Secretary to be vigilant with respect to protection of our fundamental liberties and privacy. If confirmed, I will certainly review our programs and policies with a close eye to civil liberties, civil rights, and privacy concerns.

- c. How do you envision the relationship between the office to which you have been nominated and the Department's Officer for Civil Rights and Civil Liberties?

ANSWER: If confirmed, I look forward to working with the Officer for Civil Rights and Civil Liberties to ensure we establish a close and effective partnership for this critical mission.

- d. What deference do you believe you would owe to the analysis of civil rights and civil liberties issues by the Department's Civil Rights and Civil Liberties Officer?

ANSWER: As with all members of senior management, I anticipate developing a very close relationship with the Civil Rights and Civil Liberties Officer, as well as with the General Counsel, to ensure that their expertise and responsibility is reflected in the decisions which are made.

- e. In what areas do you believe DHS needs to take additional steps in order to ensure the protection of privacy and fundamental liberties? What specific actions would you recommend as Assistant Secretary?

ANSWER: I am not prepared to recommend changes in DHS policy at this time; that is clearly a question that requires significant study. If confirmed, the question will be high on my list of items requiring review, and I look forward to any guidance the Committee may provide on the subject.

46. Section 222 of the Homeland Security Act of 2002 requires the Secretary to appoint a Privacy Officer “to assume primary responsibility for privacy policy” at DHS. Secretaries Ridge and Chertoff have both determined that the Privacy Officer should report directly to the Secretary.
- What role would the policy office, and the proposed Directorate of Policy and Planning, have with respect to privacy policy?

ANSWER: I know and respect the current Privacy Officer. I expect her and her office to continue to be a great resource on privacy policy for the Department. Because privacy considerations should be part of the Department’s decisionmaking on a wide variety of policy issues, I expect to work closely with the Privacy Office and to facilitate its participation as necessary in the Department’s policymaking.

- Would the Privacy Officer still retain primary responsibility for privacy policy? Would the Privacy Officer continue to report directly to the Secretary?

ANSWER: I see no reason to change the Privacy Officer’s current status within the Department.

- As Assistant Secretary, what would be your relationship to the Privacy Officer, and to what extent would you work with the Privacy Officer in formulating policy? As Under Secretary?

ANSWER: See the answer to subpart a.

47. The Intelligence Reform and Terrorism Prevention Act of 2004 created a Privacy and Civil Liberties Oversight Board within the Executive Office of the President. Following the 9/11 Commission’s recommendations, this Act created, for the first time, a Board that can look across the federal government and ensure that liberty concerns are appropriately considered in the policies and practices of the executive branch. The purpose of the Board is to ensure that privacy and civil liberties concerns are appropriately considered in the implementation of all laws, regulations, and policies that are related to efforts to protect the Nation against terrorism. The Board is empowered to carry out its mission in two equally important ways. First, the Board is to advise policy makers, including departments, at the front end, to ensure that when executive branch officials are proposing, making or implementing policy, they appropriately consider and protect privacy and civil liberties. Second, the Board is to conduct oversight, by investigating and reviewing government actions at the back end, reviewing the implementation of particular government policies to see whether the government is acting with appropriate respect for privacy and civil liberties and adhering to applicable rules.

- a. If confirmed, how would you view the role of the Board in the development of DHS policies?

ANSWER: If confirmed, I anticipate working cooperatively with the Board and with our statutory officers who have specifically assigned duties in these important areas.

- b. Are you committed to working with the Privacy and Civil Liberties Oversight Board as the Department develops and implements its policies? What measures will you take to ensure that the Department and its employees regularly consult with the Privacy and Civil Liberties Oversight Board in the development and implementation of Department policies related to efforts to secure the American homeland?

ANSWER: If confirmed, I am committed to working actively, along with the other members of senior DHS management, with the Privacy and Civil Liberties Oversight Board (in addition to the President's Board on Safeguarding Americans' Civil Liberties, created by Executive Order on August 27, 2004) in order to assist it in fulfilling its statutory missions. I would also expect that the Department's Officer for Civil Rights and Civil Liberties and the Office he supervises, along with the Department's Privacy Officer, who also sits on the President's Board, will have ongoing interaction with the Privacy and Civil Liberties Oversight Board. If confirmed, I will actively support these Officers in their work with the Board and, in addition, will actively seek those mechanisms which will allow for the Department and its employees to be in close coordination with the Board.

- c. Are there specific issues with regard to which you intend to seek the views of the Privacy and Civil Liberties Oversight Board?

ANSWER: I do not at this time have in mind particular issues that I plan to submit to the Board for its views. However, if confirmed, I certainly am committed to working closely with the Board leadership.

- d. What weight would you give to Privacy and Civil Liberties Oversight Board's views on proposed DHS policies and the implementation of existing DHS policies?

ANSWER: I expect to find the Board's views highly persuasive, given the quality of its members and the care I expect it to take in its deliberations.

48. DHS has considered using commercial data in airline passenger profiling systems, such as CAPPS II and Secure Flight, and in other contexts.

- a. How should DHS determine when it is appropriate to use commercial data containing personal information?

ANSWER: I don't think it is time to make that decision yet. TSA needs to focus first on implementing a government-run watch list. Then it needs to dramatically cut down on the number of false positives. If using commercial data will help prevent the hassling of innocent men, women, and children, it is a step that deserves careful consideration.

- b. Do you believe the protections in the Privacy Act should be supplemented by additional safeguards to ensure commercial data is used appropriately and to ensure privacy is adequately protected?

ANSWER: The Privacy Act restricts the use of personal data for purposes other than those for which it was collected. It also provides for monitoring compliance; safeguarding personal data while in the possession of the government; adequate redress; and transparency on intended uses of such data. I have not at this time identified additional safeguards that should be incorporated into the Privacy Act. If confirmed, I will be glad to review the Act and possible revisions in greater detail.

49. In an article in the *Los Angeles Times*, "Big Brother Finds Ally in Once-Wary High Tech," dated January 19, 2002, you were described as saying that Americans would accept new technologies that intrude on privacy as part of an effort to prevent terrorism. The article quoted you as saying "[w]e as a people are willing to trade a little less privacy for a little more security."

- a. Do you believe that improving security and maintaining privacy often require trade-offs?

ANSWER: A good part of my work since September 11 has been devoted to finding ways to improve both security and privacy through novel uses of technology, but I agree that there are times when trade-offs between the two are unavoidable.

- b. If so, how would you determine that trade-off when establishing policy? Please explain your answers.

ANSWER: Americans value their privacy. They also value their lives and those of their fellow citizens. If a modest reduction in their privacy would significantly reduce the risk of their being killed by terrorists, most Americans would make the tradeoff in a heartbeat. But Americans are understandably reluctant to give up privacy if the security benefits are speculative or dubious. I share all those views and would expect to apply them in helping to frame Department policy.

50. In a Winter 1994-1995 *Foreign Policy* article entitled "Should Spies be Cops?", you argued that "[i]ntelligence-gathering tolerates a degree of intrusiveness, harshness, and deceit that Americans do not want applied against themselves." You later testified to the 9/11 Commission, however, that you had earlier been "wrong" in that piece by asserting the "conventional wisdom" of the time in "assigning a high importance to theoretical privacy risks," and that one of the most important lessons of September 11 is that "[w]e

should not put American lives at risk for the sake of some theoretical risk to our civil liberties.”

- a. Could you describe how you would distinguish between a “theoretical” risk to our civil liberties and an actual risk? Does a violation of privacy or civil liberties need to occur before a risk becomes real and adequate safeguards need to be considered?

ANSWER: The quoted passage is a good example of a theoretical risk to our civil liberties. From the end of World War II through September 11, 2001, policymakers were increasingly focused on avoiding the risk that the methods of our intelligence agencies would infect our law enforcement and prosecution machinery. This fear was largely theoretical, but it was the foundation of the infamous “wall” between law enforcement and intelligence that left us more or less blind to al-Qaeda’s activities inside the United States. In hindsight, of course, we should have had the courage to recognize that the wall posed a far greater risk to our security than the theoretical risk to civil liberties that would be posed if we got rid of it. That was a time when we should have demanded evidence that violations of civil liberties were occurring or likely to occur on a scale that matched the risk of terrorist successes. We didn’t. I hope we will avoid that error in the future.

- b. As Assistant Secretary for Policy at DHS, you would be responsible for looking beyond the “conventional wisdom” to develop long term strategic guidance on a wide range of issues to guide the Department. In taking such a long term view, how would you make assessments about future threats - whether to our security or to our civil liberties - that have not yet materialized but which the Department must nonetheless anticipate?

ANSWER: Developing long term strategy requires looking into the future, or perhaps more accurately, looking into many futures and trying to decide which ones are most plausible. We don’t lack for plausible futures in which terrorism grows more common and more successful, or for plausible futures in which privacy is radically diminished. My goal in helping to set Department policy is to try to avoid both kinds of future.

- 51. In a dialogue for Slate.com entitled “Civil Liberties in Wartime” you questioned the need to raise concerns regarding the risks to civil liberties from efforts to pursue the war on terror. On September 17, 2001, you wrote that “Every age seems to warn itself most sternly about the risks that are least likely to do it harm,” observed that “Defending civil liberties is at the heart of the baby-boomer self-image, a self-image that’s been packaged and sold to adolescents ever since,” and urged that “instead of spending the week looking for civil liberties threats in this crisis, I wish Slate and the rest of the press were reconsidering a quarter-century of press attacks on intelligence sources and methods.”

Subsequent to the appearance of this article, we learned that in the period following September 11th, the government took certain actions that appear to have improperly intruded upon the civil liberties of certain segments of our society. For example, in June

2003, DOJ Inspector General Glenn Fine issued a report concerning the detention of 762 aliens who were held on immigration charges because the FBI indicated that these individuals were "of interest" due to the investigation of the 9/11 attacks. The IG found "significant problems" in connection with these detentions. Specifically, the OIG report found that following 9/11 the government detained hundreds of aliens on immigration charges. The OIG concluded the FBI and INS "did little to distinguish the aliens arrested as the subjects of PENTTBOM leads or where there was evidence of ties to terrorism from those encountered coincidentally to such leads with no indication of any ties to terrorism." Nevertheless, DOJ adopted a policy that such aliens would be held in detention without bond until cleared by the FBI, even if this meant holding them beyond a scheduled deportation date or preventing a voluntary departure from the United States. Due to delays in the clearance process, these detainees were held for an average of 80 days. More than a quarter of the 762 were held longer than three months. While in detention, these aliens were subject to, among other things, delays in charging them with a specific violation, obstacles to obtaining legal counsel and access to family members and, in some cases, abusive treatment. None of the individuals detained under this policy were charged with any connection to terrorism, although some were eventually deported on the basis of immigration violations.

- a. Do events since the appearance of the Slate article cause you to reconsider your views regarding the need for vigilance against civil liberties violations when adopting and implementing policies in the war on terror?

ANSWER: I think that we as a society are still too quick to accuse ourselves and our government of civil liberties violations. It is true that many of those detained after September 11 were never charged with crimes relating to terrorism. But that does not establish that they were innocent victims of civil liberties abuses. Before the hijackers took command of four planes on September 11, it would have been almost impossible to successfully charge *them* with a crime relating to terrorism. If we had learned of the 9/11 plot, we would probably have been reduced to deporting some of the hijackers on the basis of immigration violations, which is just what we did with many of those who were picked up in the aftermath of the attacks. In the context of the emergency we faced and our lack of knowledge about possible follow-on attacks and sleeper cells, these events do not change my view that the risk to civil liberties since September 11 has been overstated.

- b. If confirmed, you may be involved in formulating policies regarding the treatment of detained foreign nationals and the use of immigration laws in pursuing terror suspects. What lessons do you believe DHS should learn from DOJ's post-September 11 experience? What efforts would you take to incorporate civil liberties protections into such policies?

ANSWER: We need to remember that every encounter with a possible terrorist is also an encounter with a possible source of information about terrorist activity. Our treatment of suspects needs to be professional and correct and consistent with law, not just because respect for civil liberties is part of our values but because those values are part of our armory in the war of ideas with our adversaries.

National ID cards

52. In an article in the Financial Times, "Debate over ID cards likely to be lengthy" dated October 27, 2001, you were depicted as supporting the creation of a national identity card. In the article you were quoted as having said: "We already have government-issued ID cards, we just call them driver's licenses . . . So the privacy issue has already been lost: we have to produce our government-issued ID to travel, cash cheques, etc. The problem is they aren't issued in a consistent fashion so they don't allow us to catch the people we'd like to catch."
- a. Do you support the creation of a national identity card? If so, please describe your views on how the government should establish such a card, what security features the card should have, how it should be used, who would be required to have the card, and how privacy should be protected for card-holders.

ANSWER: The point of the quote was that most Americans already use a government-issued ID card – a driver's license – so that the real problem is making sure that driver's licenses are issued in a consistent fashion that will allow us to identify and catch the people we'd like to catch. That is exactly the problem that Congress set out to solve in the REAL ID law. Successful implementation of REAL ID should make it unnecessary to consider the question of a national identity card. Since, like all Americans, I am not completely comfortable with a mandatory national identity card, I support this approach.

- b. Please describe your views on the pros and cons of establishing a national identity card.

ANSWER: See above.

- c. If confirmed, what role would you play with respect to the possible creation of a national identity card?

ANSWER: At this time, I don't see a need to create a national identity card if we can improve the security and reliability of driver's licenses.

Trade in Encryption Technology

53. You have written about the U.S. and world trade in encryption technology and its regulation. Are there any issues related to encryption technology and its potential usefulness to terrorists that the Department of Homeland Security should address?

ANSWER: Encryption is a two-edged sword. It can protect bad guys as well as good guys. So DHS law enforcement agents probably encounter encryption while investigating everything from terrorism to child pornography. Encryption also plays a

role in protecting our critical information infrastructures from intrusion. I am not aware of any pending policy issues before the Department on encryption.

Information Sharing

54. The 9-11 Commission, among many others, noted the critical importance of information sharing to the fight against terrorism. The Intelligence Reform and Terrorism Prevention Act of 2004 implements a key recommendation of the 9-11 Commission by requiring the President to establish an Information Sharing Environment (ISE) that facilitates the sharing of terrorism information among all appropriate federal, state, local, tribal and private sector entities. The ISE was developed, in part, in response to recommendations from a task force of the Markle Foundation, on which you served.

- a. If confirmed, what would you do to make establishing this environment a priority for the Department?

ANSWER: Establishment of the Information Sharing Environment will be an important step towards ensuring that the Federal Government is communicating effectively internally as well as with our State, local, tribal, and private sector partners. If confirmed, I will make every effort to ensure that the Department continues to play an important role in the development of the ISE, so that it not only properly incorporates DHS's information and intelligence, but also so that it effectively incorporates our key external partners.

- b. How do you assess the Administration's progress thus far towards establishing the ISE?

ANSWER: I support the steps the Administration has taken so far, but I suspect that much hard work lies ahead if we are to achieve widespread rapid information sharing.

Intelligence and Law Enforcement at DHS

55. In a Winter 1994-1995 *Foreign Policy* article entitled "Should Spies be Cops?", you wrote that one illusion we should shed is that "intelligence agencies or the Justice Department itself should be expected to identify and disseminate every piece of intelligence that might be relevant to every investigation conducted by federal law enforcement agencies."

- a. Please explain this statement from the article.

ANSWER: As the second paragraph of the article makes clear, a principal concern of policymakers at the time was the BNL case, in which the CIA was accused of covering up information relevant to a criminal investigation. Fear of another BNL case led to interagency recommendations that seemed to assume that prosecutors should have access to any intelligence that might be relevant to any crime they were investigating.

This went well beyond terrorism. BNL was a banking prosecution, for example. I thought that this was impractical, a standard that the agencies were bound to fall short of. As I said in the article, “Any dissemination system that seeks to move all intelligence relevant to all Justice prosecutions into the hands of prosecutors is doomed to fail.” This is probably still true, for all the strides made since 9/11. Today, it is unlikely that a CIA officer in a foreign country would know when a banking prosecutor in Atlanta might benefit from his reports on Middle East politics. In 1994, when I wrote the article, it was plainly impossible; there was no way to sort through intelligence and match it to the thousands of ongoing prosecutions around the country.

- b. Have you changed your view since 9/11 and the 9/11 Commission released its findings related to the dissemination of information?

ANSWER: Yes. In terrorism cases, it is now possible to set a goal of identifying and disseminating every piece of terrorism intelligence that might be relevant to terrorism investigations being conducted by federal law enforcement agencies. That's a tough standard to meet, but it is the one we should aspire to. I do not believe that theoretical risks to civil liberties justify limits on information sharing that could affect our ability to identify and thwart terrorists; I testified to that effect before the 9/11 Commission.

- c. What would be your approach to dissemination of information between law enforcement and intelligence entities at DHS?

ANSWER: I expect to be impatient and demanding in trying to break down barriers between intelligence and law enforcement, at DHS or elsewhere.

- d. Are the current rules governing the sharing of information between intelligence and law enforcement appropriate, or do you believe they should be changed? Please explain your answer.

ANSWER: I'm not aware of substantial barriers to information sharing between intelligence and law enforcement today, but such barriers are always a risk. The bureaucratic desire to “own” information is eternal. If I encounter barriers of this kind, I will recommend changes, promptly.

- 56. In his letter of July 13, 2005 announcing changes to the Department as a result of his Second Stage review, Secretary Chertoff proposed elevating Information Analysis from under the IAIP Directorate to a stand-alone office that would report directly to the Secretary so that it can “reach across the Department to manage the integration of DHS intelligence capabilities.” In order to “leverage the intelligence capabilities of the entire Department,” the Secretary further acknowledged that the office must be “empowered to coordinate activities and fuse information from all intelligence offices in DHS.”

- a. What specific authorities do you believe the new Chief Intelligence Officer must have to better manage and integrate the activities of the various intelligence entities that exist within the Department?

ANSWER: I believe the new Chief Intelligence Officer must have the ability to gather all relevant information from the field, analyze the information for patterns and trends and with a mission-oriented focus, and disseminate it across the Department, as well as to our Federal, State, local, Tribal, and private sector partners. The Secretary's decision to make the new Chief Intelligence Office a direct report and to enhance its mission will be an important step in ensuring that information and intelligence is better managed and integrated across the Department.

- b. Do you think the Chief Intelligence Officer should have any authority with respect to the budget or personnel of those entities?

ANSWER: It would be premature for me to comment on this issue, assuming that it should be considered a policy question. But if confirmed, I will certainly study it.

- 57. In his letter, the Secretary recognized that IA not only needed to be empowered vis-à-vis the various intelligence entities within the Department, but that it also needed to be a "more effective conduit of information and intelligence" both at the federal level and to the Department's state, local, and tribal partners.

- a. What policy initiatives could be undertaken to make the Department a better conduit of information to State, local, and tribal authorities?

ANSWER: I fully support the Secretary's vision for enhanced information sharing, if confirmed, and I will make it a key priority to study our current efforts and to help develop effective proposals for the Secretary on how we can best implement his vision.

- b. How do you see the respective roles of the Department and the FBI when it comes to both passing and receiving threat information with State, local, and tribal authorities?

ANSWER: The passage of the Intelligence Reform and Terrorism Prevention Act (IRTPA) with Administration support underscored the Administration's commitment to information sharing. The commitment is reflected in the Secretary's plans for the next stage of the Department. With those commitments in mind, if confirmed I expect to closely consult and coordinate with the Director of National Intelligence and all of our federal partners involved in information sharing, including the FBI, to determine how we can most effectively meet this common goal.

Cyber Security

- 58. DHS and others are fearful of, and have been on the watch for, combined attacks, in which a physical terrorist attack coincides with a cyber attack to disrupt the systems

needed to respond to the physical attack. There has been some concern in Congress that the Department's structure and priorities are inadequate to address this threat. Secretary Chertoff recently addressed this concern, at least in part, by announcing that he would establish a new position of Assistant Secretary for Cyber Security and Telecommunications.

- a. What additional changes, if any, in DHS organization and management practice would you propose to improve the Department's ability to address cyber security?

ANSWER: Without taking a position on whether "DHS organization and management practice" should be considered a policy issue, I note that the Secretary has announced the creation of a new Assistant Secretary for Cyber Security and Telecommunications to further focus the priority the Department and the Administration places on securing the nation's cyber critical infrastructure. If confirmed, I look forward to working with the new Assistant Secretary on this key priority.

- b. A persistent challenge in trying to organize and manage DHS cyber security programs is ascertaining to what extent cybersecurity problems and solutions are distinctive and should be addressed by specialized officials and staff separate and independent from those responsible for the security of particular physical infrastructure sectors, and to what extent cyber security problems and solutions can best be addressed by officials and staff who are integrated into the teams responsible for the security of the particular physical infrastructure sectors. How do you believe this challenge should be addressed?

ANSWER: I understand that the framework of the National Infrastructure Protection Plan (NIPP) recognizes the challenge of cyber security and the interdependency between the physical infrastructure and cyber systems and that the National Cyber Security Division, in addition to addressing cyber security specifically, currently is providing assistance to the Sector Specific Agencies responsible for the other 16 critical infrastructures and key resources identified in Homeland Security Presidential Directive 7. If I am confirmed, I will further review this issue.

- 59. Our critical cyber infrastructure is subject to attack from a variety of individuals and groups - terrorists, criminal groups, and foreign intelligence services, as well as hackers and disgruntled insiders.

- a. What do you believe is the relative risk of attack from these or other types of malicious actors, and how does your answer to this question affect the relative priorities that you believe DHS should place on various aspects of its infrastructure protection mission?

ANSWER: Speaking for myself, I suspect that hackers and disgruntled insiders are the source of most attacks today, but they are probably not the most serious threat to our infrastructure. Terrorists, criminal groups, and foreign governments can probably cause much more damage. A risk-based approach suggests that we address each of the possible

attackers, though perhaps in different ways. If I am confirmed, I look forward to examining the current policies necessary to appropriately respond to these risks.

60. Do you believe the Department's cyberspace security R&D budget is sufficient and appropriate, in comparison to other R&D priorities? What would be your priorities for R&D in the area of cyberspace security?

ANSWER: If I am confirmed, and if these are appropriately viewed as policy matters, I will review the funding allocated for R&D related to cyber security and existing policies and priorities.

61. The DHS strategy for protecting critical infrastructure includes efforts to foster the sharing of information by infrastructure owners about security vulnerabilities and incidents.
- How important do you believe such information sharing is, and how successful do you believe current government policies and efforts have been at achieving such information sharing?

ANSWER: Information sharing between the federal government and state and local governments and the private sector will help to secure the nation's critical infrastructure. I understand that DHS has implemented numerous programs to share information with the owners and operators of critical infrastructure such as the Homeland Security Information Network and the Sector Coordinating Councils. If I am confirmed, I look forward to further reviewing this important issue.

- What, if anything, do you believe should be done to improve the sharing of security-related information by the owners of critical infrastructure?

ANSWER: As noted above, I understand that DHS has implemented several programs to further information sharing with the owners and operators of critical infrastructure. If confirmed, I look forward to further reviewing these existing policies and examining whether more can be done.

62. The October 2003 paper entitled "A Patch in Time Saves Nine: Liability Risks for Unpatched Software," written by you and one of your colleagues and distributed by your law firm, stated, "It is largely undisputed that the effort and expense of installing security patches is generally less than the effort and expense of recovering from attacks that exploit unpatched vulnerabilities." The article raised the question whether public unhappiness at the effects of malicious software exploiting known, patchable vulnerabilities would cause companies to face liability for failing to apply appropriate practices.

- The legal analysis in the article explained that the risks of such liability - which could arise either under federal or state statute and regulation or under common law contract or tort principles - are already significant and are likely to increase

over time. Your article did not reach the policy question of whether companies *should* bear liability for not following some appropriate standard of cybersecurity. Some have argued that such liability can serve as a market-based incentive for companies to achieve a level of cybersecurity that is in the public interest. What is your opinion about this? Likewise, is it in the public interest for software manufacturers to bear liability for certain cybersecurity flaws in their products or practices?

ANSWER: The policy question of liability for cyber security flaws was well beyond the scope of the article, and I cannot pretend to have plumbed the depths of the policy arguments on this issue. I look forward to studying the issue further if confirmed.

- b. What, if anything, do you believe DHS or Congress should do to increase, decrease, or otherwise alter the liability risks faced by software users and manufacturers? What research or analysis, if any, do you believe DHS or others should undertake to help policymakers ascertain whether such liability risks are in the public interest?

ANSWER: If confirmed, I will certainly study this issue further, however, it would be premature to comment upon the kind of research and analysis that is necessary without further study.

Critical Infrastructure

63. Security expert Dr. Stephen Flynn makes the case in his book, “America the Vulnerable: How Our Government is Failing to Protect Us From Terrorism” that despite the many post-9/11 security precautions that have been proposed and implemented since 9/11, “our most serious vulnerabilities remain ominously exposed.” Dr. Flynn argues that we have not really begun the work of integrating security into our economy and marketplace such that it is an accepted part of the way we conduct business, similar to the way we have integrated product safety: “the rationale for investing in security should follow the same logic [as incorporating safeguards in products]. The difference is that security focuses on developing countermeasures against people who consciously set out to cause harm and spawn disruptive consequences.” Dr. Flynn states that the government, working closely with the private sector, must help establish and oversee minimum security standards for critical sectors. Do you agree with Dr. Flynn’s assessment that government must play a more forceful role in raising the bar for security in critical sectors? Please explain.

ANSWER: Several of the 17 critical infrastructures and key resources identified in Homeland Security Presidential Directive 7 are already subject to significant regulatory oversight and standards, such as the nuclear industry. I understand that the Department is currently working with the private sector to address where more could be done and has stated its intention to work with Congress to address security within the chemical sector. If I am confirmed, I look forward to further reviewing this issue.

64. One of the problems Dr. Flynn has cited is the lack of incentive in the private sector to adequately invest in security. For example, with respect to protecting the 85% of the nation's critical infrastructure owned by the private sector, Flynn contends that "unfortunately, without standards, or even the threat of standards, the private sector will not secure itself. In fact, in the absence of clearly defined and well-enforced security requirements, companies that invest in protective measures for the parts of the infrastructure that they own place themselves at a competitive disadvantage."
- a. If confirmed, how would you seek to ensure that the private sector's critical infrastructure assets are adequately protected?

ANSWER: Protection of the nation's critical infrastructure must be a national effort and will be successful only with the cooperation and involvement of the private sector owners and operators of critical infrastructure. I understand that DHS has taken significant steps to engage stakeholders, share information, and work with the owners and operators to identify appropriate protective measures. If confirmed, I look forward to further reviewing existing policies.

- b. Do you believe that DHS should do more to convince private businesses that defending critical infrastructure is a necessary cost?

ANSWER: As stated above, I understand that DHS is engaging stakeholders and working with them to implement protective measures. If confirmed, I will further review this issue and will not hesitate to suggest additional steps.

- c. Do you believe that DHS needs any additional authorities to prompt the private sector to improve security of critical infrastructure?

ANSWER: As mentioned, the Department is currently working to identify an appropriate regulatory framework to address the security of the chemical sector. If confirmed, I look forward to reviewing this issue and the security issues related to the 17 critical infrastructure sectors and key resources.

- d. What, if any, incentives or disincentives do you believe government should provide in order to ensure that minimum security standards are reached?

ANSWER: The cooperation of the owners and operators of the nation's infrastructure is critical to the success of DHS' effort to implement a national plan to protect that infrastructure. I understand that the Department is currently revising the National Infrastructure Protection Plan to further delineate the roles and responsibilities of the federal government, state and local entities, and the private sector. If confirmed, I look forward to reviewing this effort and to examining what incentives or disincentives could further this effort.

65. This Committee has held four hearings on chemical site security, with the stated goal of the Chairman and Ranking Member being to draft and markup chemical security

legislation in the near future. The Department of Homeland Security has testified that such legislation is needed, and that it plans to provide a framework for such a regulatory program.

- a. To your knowledge, what is the status of this effort within DHS?

ANSWER: I understand that DHS is working on this issue. If confirmed, I will further review this issue.

- b. If confirmed, what role do you anticipate playing in helping to shape chemical security legislation?

ANSWER: If confirmed, I will further review this issue and work with Department leadership to craft appropriate policy and response to this important issue.

Public Information

- 66. The Critical Infrastructure Information Act (CIIA), enacted as part of the Homeland Security Act, was intended to establish a framework within which infrastructure owners would provide information about security vulnerabilities and incidents to DHS, and under which DHS would use that information in working to respond to incidents and to reduce vulnerabilities.

- a. Do you believe the CIIA has been effective at furthering the purposes for which it was enacted?

ANSWER: I understand that the CIIA has furthered the mission of DHS by encouraging the private sector to submit sensitive critical infrastructure information that DHS has used to further identify vulnerabilities

- b. Some have argued that the CIIA establishes a broader exemption from the Freedom of Information Act (FOIA) and other sunshine laws than necessary, and that the accountability of government and infrastructure owners suffer as a result. Others have argued that exemptions from sunshine laws, such as those in the CIIA, will not provide sufficient incentive for infrastructure owners to share necessary security-related information, and that government mandates may therefore be necessary. What is your opinion of those arguments? What, if anything, do you believe should be done to make the CIIA more effective? What, if anything, do you believe should be done to improve government policy for getting infrastructure owners to share the information related to critical infrastructure security?

ANSWER: The CIIA specifically protects sensitive information that is not otherwise publicly available. If confirmed, I look forward to further reviewing this issue to determine if DHS's implementation of the CIIA can be more effective.

67. As part of our nation's counter-terrorism efforts, much unclassified information that agencies believe is sensitive has been removed from government websites, and DHS and other agencies have otherwise expanded the amount of sensitive but unclassified information that they try to keep out of the hands of the public. Some have claimed that these efforts go too far and can be counterproductive, arguing that keeping the public from learning about security risks and that security-related missteps can interfere with oversight and accountability. What do you think of this argument? Generally, what do you believe DHS should do to foster appropriate policies, within DHS and at other agencies, with respect to ascertaining what unclassified information is sensitive and should be kept out of the hands of the public?

ANSWER: In the words of Justice Brandeis, "Sunlight is said to be the best of disinfectants." I agree. But we now live in a world where we cannot inform our citizens and get the benefit of that sunlight without also informing terrorists who will use the data to do us harm. That fact inevitably influences the balance we strike in deciding what information to make public.

Science and Technology Directorate

68. The Homeland Security Act established the DHS Undersecretary for Science and Technology as the primary advisor to the DHS Secretary on research and development priorities and required the Undersecretary to develop a "national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts." DHS has not issued a national strategy for homeland security research and development (R&D). The recent decision to move responsibility for radiation detection R&D out of S&T and into a free-standing office has raised concerns about S&T's long-term ability to carry out its statutory responsibilities.
- In light of your experience in government and the private sector, do you believe the federal government's many R&D programs related to homeland security research with respect to chemical, biological, radiological, and nuclear terrorist threats are fragmented across too many departments?

ANSWER: It is my understanding that the S&T Directorate on behalf of DHS works with the Office of Science and Technology Policy, the Homeland Security Council, the National Security Council, the Office of Management and Budget and the Office of the Vice President to help coordinate homeland security research and development across the entire United States government. This encompasses homeland security research and development being conducted by the Departments of Agriculture, Commerce, Defense, Energy, Justice, Health and Human Services, State, and Veteran's Affairs; within the National Science Foundation, the Environmental Protection Agency and other Federal agencies; and by members of the Intelligence Community. As I understand, through

these interagency working groups, DHS is able to collaborate with these and other Federal partners to help identify related needs and requirements, conduct research and development of mutual benefit, and avoid duplication of effort.

- b. What are your views about the appropriate role for the S&T Directorate with respect to coordination of government-wide R&D related to homeland security given the authorities of the DHS Undersecretary of Science and Technology under Title III, Section 302 of the Homeland Security Act to develop a “national policy and strategic plan” for homeland security R&D and establish “priorities for directing, funding, and conducting national” R&D to prevent the importation of chemical, biological, radiological, nuclear weapons?

ANSWER: I am told that the Under Secretary for Science and Technology has been working with his staff and the Executive Office of the President to develop the National Policy and Strategic Plan for Homeland Security Science and Technology as mandated by Section 302(2) of the Homeland Security Act of 2002. My understanding is that there has been significant collaboration on this effort from all the relevant Federal Departments and agencies, and that the plan is nearing completion. This is an extremely important item on the President’s Management Agenda, and the Science and Technology Directorate has been working closely with the Office of Management and Budget to ensure timely completion of the plan.

- c. Do you believe a national strategy for homeland security R&D should include comprehensive and clearly defined goals and measurable objectives that enable annual evaluation of accomplishments?

ANSWER: It is my understanding that the Under Secretary for Science and Technology, the Executive Office of the President, and other Federal Departments and agencies have worked together to develop the content of the National Policy and Strategic Plan for Homeland Security Science and Technology. This document will provide a strategic vision for homeland security science and technology over the next ten years for programs focused on specific threat areas and homeland security related challenges.

- d. Given the cross-cutting importance of science and technology to many DHS policies and programs, what is your understanding about how your role will intersect with and complement that of the Undersecretary for S&T?

ANSWER: My role as the head of Policy for the Department will be as the primary coordinator across the Department for policies, regulations and other initiatives. At the same time, my staff and I will ensure consistency of policy and regulatory development across the Department. As science and technology can inform these processes, the Under Secretary for Science and Technology and his subject matter staff will be included in appropriate discussions. And, I expect to work in a collegial and cooperative fashion with the Undersecretary for S&T. The Science and Technology Directorate is certainly one of the key, critical assets to the Department and can help secure the nation through

not only its technology development but also by providing science-based actionable information to inform policy development.

- e. In the National Strategy for Homeland Security, President Bush said DHS would establish a National Laboratory for Homeland Security. Do you believe DHS should proceed to use the authorities provided under Title III to establish a single National Lab as the institutional hub for homeland security R&D?

ANSWER: As deemed necessary to meet DHS mission requirements, I would expect DHS to take full advantage of the authorities in Title III to establish National Laboratories. The S&T Directorate will continue to use the DOE National Laboratories and sites, other DHS laboratories, private sector resources, universities and other partners in the homeland security complex to best meet the technical requirements of our end-users. That said, as I have not fully considered this issue I intend to do so more fully if confirmed.

Human Capital

- 69. The final regulations for the DHS personnel system provide that, when management issues directives, matters addressed in those directives are no longer allowed to be the subject of collective bargaining. The regulations also expand the scope of "management rights" that managers can exercise without being required to bargain. In a recent decision, the U.S. District Court for the District of Columbia ruled that the portion of the new DHS personnel rules governing collective bargaining violated the requirement in the Homeland Security Act that employees' right to bargain collectively be ensured. What do you believe would be the effect of these regulations on the nature and extent of DHS employees' right to bargain collectively and to participate through labor organizations in decisions that affect them?

ANSWER: Although I have not studied the regulations in depth, if confirmed, I would certainly look to the General Counsel for his legal interpretation of the meaning of these regulations as well as to the Under Secretary for Management for interpretation of their effect.

- 70. What role, if any, do you believe the Assistant Secretary for Policy should have in addressing challenges in the area of human capital management at the Department? What do you believe are the principal challenges, and what would you do, if confirmed, to help address them?

ANSWER: As the central policy-making office for the Department, I anticipate developing a close working relationship with all departmental senior management, including the Under Secretary for Management. As such I would anticipate we would coordinate closely on all policy matters.

- 71. The Department's new regulations for establishing a pay-for-performance system outline an intention to implement key safeguards for the purpose of achieving a fair, effective,

and credible system. What do you believe can be done to fulfill this worthy goal and to mitigate any risk that the enhanced management discretion will foster arbitrary and unfair action and politicization in the workplace?

ANSWER: In undertaking this challenge, I support the Department's desire to implement these key safeguards to ensure this system operates as intended. And, if confirmed, I look forward to studying the regulation and intended plans for establishing these safeguards. I also look forward to working closely together with the Department to ensure that any appropriate policy considerations are evaluated in the development and implementation of these safeguards.

72. Many believe that effective human resources management requires that employees at all levels be included in making day-to-day decisions that affect their working lives. Do you agree that involving employees in such decisions is critical to successful operations of DHS? How do you believe such involvement should be accomplished?

ANSWER: I have not yet studied the depth of employee involvement in day-to-day decision-making at DHS. However, if confirmed, I certainly look forward to determining the appropriate level of employee input and collaboration into the mechanics of the policy office.

Property

73. Secretary Chertoff envisions a unified policy office that will "facilitate long-term strategic planning and risk-based allocation of Department resources."

- a. Does this extend to setting policy for physical resources?

ANSWER: I think it would be hard to call physical resources planning a policy function. Under the Homeland Security Act, the Under Secretary for Management is provided principal authority for, among other functions, the management of physical resources. It is my view that the policy office would participate with the rest of the DHS senior management in the determination of such decisions by the Under Secretary.

- b. It has been proposed that the Department can operate more effectively if all or most offices are consolidated at a single physical location. The FY 2006 budget request for GSA has \$13.1 million for rebuilding infrastructure and \$25 million to design a new Coast Guard Headquarters on the West campus of St. Elizabeth's in Washington. If the Coast Guard will be relocating to St. Elizabeth's, does it follow that departmental policy will be to consolidate as much of the Department as possible at St. Elizabeth's?

ANSWER: Reserving the question whether this is really a policy question, I have not been briefed on the issue; if confirmed, I look forward to learning more about any policy aspects of the Department's plans regarding the St. Elizabeth's campus.

- c. If so, please describe those plans in detail and tell us when will we see movement on that front.

ANSWER: Please see 73(a) and (b).

74. Given the Department's security needs, it would seem that securing a single location might be more economical than providing security at multiple locations. In developing a strategic long-term plan, what assurances can you provide that economic considerations will be given appropriate weight, and that the costs of security will be considered when making relocation decisions?

ANSWER: Again, although I have not been briefed on these issues, if confirmed I look forward to learning more about any policy aspects of the Department's future plans for its location.

IV. Relations with Congress

75. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

ANSWER: I do so agree.

76. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

ANSWER: I do so agree.

V. Assistance

77. Are these answers your own? Have you consulted with the DHS or any interested parties? If so, please indicate which entities.

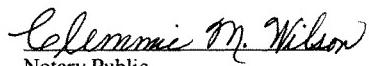
Many of the questions posed in this questionnaire go to a level of specific detail about Department programs, DHS sub-components, or other efforts about which I have relatively little in the way of current, firsthand, personal or definitive knowledge. That said, I have endeavored to identify as much information as possible so as to be as responsive as possible to the Committee. This has entailed normal pre-confirmation and departmental orientation consultations with the White House personnel office and related staff, the Office of Government Ethics, and DHS staff. That said, these answers are my own, and are based upon my understanding of the information provided to me.

AFFIDAVIT

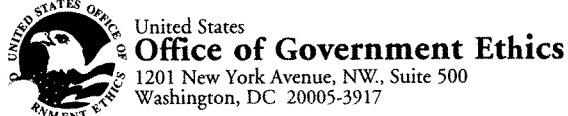
I, Stewart A. Baker, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



District of Columbia, ss.
Subscribed and sworn before me this 2nd day of September, 2005.


Clemmie M. Wilson
Notary Public

Clemmie Wilson
Notary Public, District of Columbia
My Commission Expires 02-14-2006



United States
Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

August 2, 2005

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Stewart A. Baker, who has been nominated by President Bush for the position of Assistant Secretary for Policy, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated July 15, 2005, from Mr. Baker to the Department of Homeland Security ethics official, outlining the steps that Mr. Baker will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Baker is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn L. Glynn".
Marilyn L. Glynn
General Counsel

Enclosures

**OPENING STATEMENT OF JULIE MYERS
BEFORE THE SENATE COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
September 15, 2005**

Chairman Collins, Senator Lieberman, and Distinguished Members of the Committee, I am honored to appear before you today. I would also like to thank Senator Roberts for his very kind introduction. On a personal note, I would also like to thank my parents, Kathy and David Sinzheimer, and my fiancé, John Wood, for their constant encouragement and support.

I am honored and humbled by the confidence that the President and Secretary Chertoff have shown in me by recommending me for the position of Assistant Secretary for Immigration and Customs Enforcement (ICE).

ICE is fortunate to be staffed by extremely talented and professional career law enforcement officials, analysts, and support staff. I have had the privilege of working with many of them over the past several years – as a federal prosecutor in Brooklyn, as a Deputy Assistant Secretary for Money Laundering and Financial Crimes, as the Chief of Staff for the Criminal Division, and most recently as the Assistant Secretary for Export Enforcement at the Commerce Department. I am looking forward, if confirmed, to partnering with them again in working toward our common objective.

That objective could hardly be more important. ICE plays a vital role in ensuring the security of the American people by securing federal facilities and ensuring effective enforcement of our immigration and customs law. Collaborating with other agencies, ICE is profoundly committed to preventing terrorist attacks by preventing exploitation of our immigration and customs systems – and doing so in a manner that fosters confidence in the immigration system and the rule of law.

With respect to ICE's immigration enforcement mission, the agency operates amidst significant challenges to the integrity of our overall immigration system. According to some estimates, there are approximately 11 million illegal aliens in the United States today, and this number is growing by 500,000 a year.

The vast majority of these illegal aliens come, understandably, because the promise of America is so great. And there can be no question that the legal process for entering and gaining citizenship can at times be agonizingly slow and frustrating.

But, inevitably, a few illegal aliens enter the United States for far more malevolent reasons. These aliens break one law by entering the country, with the goal of violating more laws once they're here: to align with violent gangs; to smuggle more people across the border, sometimes in the most inhumane conditions imaginable; to exploit children; to deal in narcotics; and yes, to commit acts of terrorism. First and foremost, ICE is charged with finding, prosecuting and removing these aliens.

At the same time, ICE also has a more general responsibility to seek to promote a level playing field for those who *do* play by the rules, and to ensure that they receive fair and respectful treatment. I'm talking about newly naturalized citizens who make the applications to sponsor their relatives for admission; those persecuted in their home countries who apply for asylum and work their way through the review process; and employers that refuse to hire an individual without proper documentation.

We must find a way to honor our American tradition of welcoming newcomers from other lands, while at the same time addressing the weaknesses in our current immigration system. Strong, effective enforcement must be a key part of any proposal to do just that. I am encouraged by the growing interest here in Congress and in the Administration to consider comprehensive immigration reform, and if confirmed, I will do all that I can to help this effort.

ICE's critical role extends far beyond immigration, of course. If confirmed, I will work to ensure the success of ICE's other law enforcement missions. In particular, the agency must continue to find more effective methods to meet the threats of the post-9/11 world, wherever they arise -- across borders, within the interior, in our financial systems, or at federal facilities.

Building upon my work as Deputy Assistant Secretary for Money Laundering at the Treasury Department, I intend to place particular emphasis on effective use of ICE's financial expertise, to ensure that the agency is continuing to aggressively target schemes that terrorist and other criminal organizations use to earn, move and store their illicit funding. In addition, my work at the Commerce Department underscored for me the importance of effective strategic investigations to protect our national security. As such, I will highlight ICE's work in identifying and disrupting organizations and individuals that are illegally trafficking in Weapons of Mass Destruction and their components, including those who illegally obtain and transfer critical technology and arms to restricted or prohibited persons, groups, or nations.

ICE, of course, is still a relatively new agency. Major accomplishments have already been made toward fully integrating the bureau's workforce. If confirmed, I will continue these efforts and look for ways to expand them. In particular, I will seek to develop additional ways to exploit opportunities where customs and immigration investigative authorities intersect. I will work to ensure that our financial management systems and controls are strong, effective and consistent across all our programs. I will work, in sum, to ensure that all ICE employees act together, in pursuit of our common purpose.

And, further, I will strive to ensure that this commitment to a shared purpose reflects the priorities of the Department of Homeland Security. If confirmed, I will seek to fine-tune coordination and streamline information sharing with other officials in the Department, such as the Director of Citizenship and Immigration Services and the Commissioner of Customs and Border Protection. Drawing upon my combined experience at the Departments of Treasury, Justice and Commerce, I intend to strengthen ICE's good relationships with our law enforcement partners outside of DHS.

In conclusion, I would like to thank the Committee for its consideration of my nomination. If confirmed, I will look forward to working closely with members of the Committee, the Committee staff, and the Congress as a whole.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES**A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names used.)

Julie Lyn Myers

2. **Position to which nominated:**

Assistant Secretary for Homeland Security (Bureau of Immigration and Customs Enforcement)

3. **Date of nomination:**

June 30, 2005

4. **Address:** (List current place of residence and office addresses.)

5. **Date and place of birth:**

July 12, 1969; St. Louis, Missouri

6. **Marital status:** (Include maiden name of wife or husband's name.)

Single.

7. **Names and ages of children:**

None.

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Shawnee Mission North High School, 1984-1987, graduated May 1987.

Johnson County Community College, received credits for courses taken at my high school (did not physically attend class at JCCC), 1985-1987.

Baylor University, 1987-1991, B.A. May 1991.

Cornell Law School, 1991-1994, J.D. May 1994.

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

- 1) Teaching Assistant for Professor Kevin M. Clermont; Cornell Law School; Ithaca, NY 6/1992-8/1992 and 1/1993-5/1993.
- 2) Summer Clerk for Cornell University Counsel's Office; Ithaca, NY; 6/1992-8/1992.
- 3) Teaching Assistant for Professor Stuart Schwab; Cornell Law School; Ithaca, NY; 8/1993-11/1993.

- 4) Teaching Assistant for Professors Kevin M. Clermont and John Siliciano; Cornell Law School; Ithaca, NY; 1/1994-5/1994.
- 5) Summer Associate; Mayer, Brown & Platt (law firm); Chicago, IL; 6/1993-8/1993 and 6/1994-8/1994.
- 6) Law Clerk; Chambers of the Honorable C. Arlen Beam; U.S. Court of Appeals for the Eighth Circuit; Lincoln, NE; 8/1994-8/1995.
- 7) Associate; Mayer, Brown & Platt; Chicago, IL; 10/1995-12/1997.
- 8) Associate Independent Counsel; Office of the Independent Counsel (Kenneth W. Starr); Little Rock, AR and Washington, DC; 1/1998-10/1999.
- 9) Assistant United States Attorney; United States Attorney's Office for the Eastern District of New York; Brooklyn, NY; 10/1999-10/2001.
- 10) Deputy Assistant Secretary (Money Laundering and Financial Crimes); Department of the Treasury; Washington, DC; 10/2001-10/2002.
- 11) Chief of Staff for Assistant Attorney General Michael Chertoff, Criminal Division; Department of Justice; Washington, DC; 11/2002- 9/2003 (Deputy Chief of Staff 11/2002-12/2002).
- 12) Assistant Secretary of Commerce (Export Enforcement); Department of Commerce; Washington, DC; 9/2003-11/2004 (Senior Advisor prior to confirmation, confirmed 10/2003).
- 13) Special Assistant to the President for Presidential Personnel; Executive Office of the President; Washington, DC; 11/2004 – present.
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.
None.
11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
Member of the Board of Directors, Myers Brothers of Kansas City, Inc.; automotive industrial equipment firm; 2/2004- 4/2005 (uncompensated).
12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.
 Kansas State Society
 State Bar of Illinois
 American Bar Association
 Chicago Bar Association
 Lincoln Inn of Court
 Admitted to practice in various federal courts
 Baylor Alumni Association
 Kappa Alpha Theta
 Women in International Trade
 DOJ Liaison to ABA Task Force on Ethical Standards for Prosecutorial Investigations
 Cornell Christian Legal Group, Co-Chair
 Federalist Society (student member)

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None. I volunteered for one day for the Robert L. Ehrlich for Governor campaign in 2002.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

\$1000 – Bush-Cheney '04, Inc.

Approximately \$250 – Republican National Committee, '04

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Omicron Delta Kappa

Golden Key National Honor Society

Baylor University President's Award for Excellence in Student Involvement

American Jurisprudence Award for the Highest Grade in Constitutional Law

Winner, Two Cornell Law School Moot Court Competitions

cum laude graduate of Cornell Law School

Editor, Cornell Law Review

Various awards related to government service, including from the Department of Justice and Department of Treasury.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

I was co-author for one brief article for a newsletter at Mayer Brown & Platt on employment law and the requirements of the ADA in 1995.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

I have included copies of my previous testimony. I have also included copies of my relevant speeches to the extent that I have a copy of a written speech. Most often, I spoke from notes or talking points and I no longer have those notes. Where I could find articles written about the speeches, I have also included them.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe that the President nominated me based on my track record as a Special Assistant to the President, Assistant Secretary of Commerce (Export Enforcement), Chief of Staff for the Criminal Division at the Department of Justice, Deputy Assistant Secretary at the Department of Treasury, and Assistant United States Attorney in the Eastern District of New York.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have extensive management experience and law enforcement expertise.

Regarding management experience, as Assistant Secretary (Export Enforcement) at the Commerce Department, I directly supervised nine field offices with federal agents who investigated dual-use export control cases, as well as five foreign attachés. As such, I was responsible for a budget of \$25 million and supervised approximately 170 employees. From the outset, I aimed to strategically target the agency in order to focus on the most significant violations, work productively with industry to prevent violations, and resolve civil cases as fairly and expeditiously as possible. During my tenure, the agency brought some of its most high profile criminal cases, such as the Asher Karni nuclear smuggling investigation. At the same time, the agency more than doubled its civil enforcement cases.

At the Department of Justice, I served as Chief of Staff in the Criminal Division, a division with approximately 500 lawyers and a budget over \$120 million. As part of my duties there, I assisted then-Assistant General Michael Chertoff on all matters before the Criminal Division, and managed some of the Division's most sensitive sections--including Public Integrity and Organized Crime.

In terms of law enforcement expertise, as an Assistant United States Attorney, I investigated and prosecuted criminal cases, and worked with Customs and INS agents on everything from simple smuggling cases to highly complex money laundering investigations. At the Department of Treasury, I once again worked closely with Customs agents, this time on the national money laundering strategy, as well as major investigations. I also worked to establish strong partnerships with our foreign counterparts, an essential element of law enforcement in an age of multinational terrorist and criminal organizations. At the Department of Justice, I helped refine criminal enforcement policy and assisted on many terrorism-related matters. Among other tasks, I worked extensively with the newly-formed Department of Homeland Security, including ICE and other DHS components, on information sharing, law enforcement coordination, smuggling and trafficking initiatives, and international money laundering initiatives. At the Commerce Department, finally, I oversaw an area in which ICE plays a prominent part, dual-use export enforcement.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Yes.
2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.
No.
3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
No.
5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
No.
2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.
None.
3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?
Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
No.
2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.
No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I have not personally been involved as a party in interest in any administrative agency proceeding or civil litigation. In terms of my business interests, Myers Brothers of Kansas City, Inc., was not involved as a party of interest in any administrative agency proceeding or civil litigation while I was a member of the Board of Directors. I do not know whether they have otherwise ever been involved as a party of interest in any administrative agency proceeding or civil litigation.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

AFFIDAVIT

Julie Lyn Myers being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this

10th day of July, 2005

Julie Myers
Notary Public

My Commission Expires 02/14/2009
Notary Public, District of Columbia
ALMA LY FINGERES

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the
Nomination of Julie Myers to be
Assistant Secretary, Department of Homeland Security**

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Assistant Secretary of the Department of Homeland Security?

RESPONSE: I believe that the President nominated me based on my track record as a Special Assistant to the President, Assistant Secretary at the Department of Commerce (Export Enforcement), Chief of Staff for the Criminal Division at the Department of Justice, Deputy Assistant Secretary at the Department of Treasury, and Assistant United States Attorney in the Eastern District of New York.

2. Were any conditions, expressed or implied, attached to your nomination?

RESPONSE: No.

3. What specific background and experience affirmatively qualifies you to be Assistant Secretary of the Department of Homeland Security?

RESPONSE: I have extensive management and law enforcement expertise.

Regarding management experience, as Assistant Secretary (Export Enforcement) at the Department of Commerce, I directly supervised nine field offices with federal agents investigating dual-use export control cases, as well as five foreign attaches. As such, I was responsible for a budget of \$25 million and supervised approximately 170 employees. From the outset, I aimed to strategically target the agency in order to focus on the most significant violations, work productively with industry to prevent violations, and resolve civil cases as judiciously and expeditiously as possible. During my tenure, the agency brought some of its most high profile criminal cases, such as the Asher Karni nuclear smuggling investigation, and the office more than double its civil enforcement cases.

At the Department of Justice, I served as Chief of Staff in the Criminal Division with approximately 500 lawyers and a budget over \$120 million. As part of my duties, I assisted then-Assistant Attorney General Michael Chertoff on all matters and managed some of the Division's most sensitive sections--including Public Integrity and Organized Crime.

In terms of law enforcement expertise, as an Assistant United States Attorney, I investigated and prosecuted criminal cases, and worked with Customs and INS agents on

every matter from simple smuggling cases to highly complex money laundering investigations. At the Department of Treasury, I worked closely with Customs agents, this time on the national money laundering strategy and major investigations. I also worked to establish strong partnerships with our foreign counterparts, an essential element of law enforcement in an age of multinational terrorist and criminal organizations. At the Department of Justice, I helped refine criminal enforcement policy and assisted on many terrorism-related matters. Among other tasks, I worked extensively with the newly-formed Department of Homeland Security, including ICE and other DHS components, on information sharing, law enforcement coordination, smuggling and trafficking initiatives, and international money laundering initiatives. At the Commerce Department, finally, I oversaw an area in which ICE plays a prominent part, dual-use export enforcement.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Assistant Secretary of Homeland Security? If so, what are they and to whom have the commitments been made?

RESPONSE: No. In responding to the questions below, however, I am now affirming support for several specific DHS initiatives, which I would, of course, honor if confirmed by the Senate.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

RESPONSE: Based on consultation with DHS Ethics Counsel and review by the Office of Government Ethics, I am intending to put in place a standard recusal regarding my family's business, Myers Brothers of Kansas City, Inc. Generally speaking, I am committed to working closely with the Department to avoid any situation that could cause a conflict of interest or the appearance of a conflict of interest.

II. Role of the Assistant Secretary, Department of Homeland Security

6. What is your view of the role of Assistant Secretary of Homeland Security?

RESPONSE: The Assistant Secretary of Homeland Security forms an integral part of the Department's team to safeguard our national security, and ensure effective immigration and customs enforcement.

7. In your view, what are the major internal and external challenges facing the Department of Homeland Security and ICE? What do you plan to do, specifically, to address these challenges?

RESPONSE: DHS was founded to protect America from another terrorist attack and to help our first responders and the communities they serve to respond, assist in and recover from any attacks that may occur. I know DHS faces numerous challenges, including the integration of information, securing our borders and transportation modes and strengthening the security of other critical infrastructure. While working to achieve these goals, we must pay special attention to preserving the free flow of people, goods, and services, while also protecting the privacy, civil rights and civil liberties of our citizens.

If confirmed as Assistant Secretary, I would help to define and execute effective strategies that reduce vulnerabilities and meet DHS's missions in the area of immigration and customs enforcement. In particular, I would work with the Department and Hill to help formulate, and then execute, ICE's role in comprehensive immigration reform.

8. How would you plan to communicate to ICE staff on efforts to address relevant issues?

RESPONSE: I believe that effective intra-agency communication is essential. If confirmed, I would seek to use a variety of tools to communicate with ICE staff on a regular basis, including as many in-person visits as practicable. I also understand that ICE has an excellent public affairs staff, which I would work with closely to ensure ICE issues and successes are communicated effectively intra-agency.

9. With 14,213 full-time equivalent employees, ICE needs a leader well versed in interagency cooperation and communication. How would you approach management of the field organization?

RESPONSE: In my view, effective management of the field organization must be predicated on effective communication between the field and headquarters, including effective communication between line agents and their first line supervisors. These lines of communication must go both ways -- the field must know the priorities of headquarters, and headquarters must know what matters most to the field.

10. Section 442(a)(2) of the Homeland Security Act requires the Assistant Secretary of the Bureau of Border Security, renamed BICE, to have a minimum of 5 years of professional experience in law enforcement and 5 years in management experience. With 14,213 full-time equivalent employees, management of ICE poses significant challenges.

1. Please describe the nature of your law enforcement and managerial experience that would both count toward the statutory requirements and help fashion your approach to management.

2. For each position that you would count toward the management experience requirement, please describe the nature of your managerial responsibilities, the number of employees you supervised, and the time period during which you held the position.

RESPONSE: My experiences as Assistant United States Attorney, Deputy Assistant Secretary, Chief of Staff for the Criminal Division, Assistant Secretary of Commerce, and Special Assistant to the President have all provided me opportunities to manage various sized groups and projects.

- As Special Assistant to the President for Presidential Personnel, I have managed the political appointment process for a number of agencies, and directly supervised up to three Deputy Associate Directors, two staff assistants and interns. I have served in this position since November 2004.
- As Assistant Secretary (Export Enforcement) at the Commerce Department, I directly supervised nine field offices with federal agents who investigated dual-use export control cases, as well as five foreign attachés. As such, I was responsible for a budget of \$25 million and supervised approximately 170 employees. I held this position from October 2003 through November 2004 (during September to October 2003, I served as a senior advisor at the Commerce Department).
- At the Department of Justice, I served as Chief of Staff in the Criminal Division, a division with approximately 500 lawyers and a budget over \$120 million. As part of my duties there, I assisted then-Assistant Attorney General Michael Chertoff on all matters before the criminal division, and managed some of the Division's most sensitive sections--including Public Integrity and Organized Crime. I directly supervised the Office of Administration and front office staff. I held this position from approximately November 2002 to August 2003 (during November and December 2002, I served as Deputy Chief of Staff).
- At the Department of Treasury, I served as a Deputy Assistant Secretary for Money Laundering and Financial Crimes in the Office of Enforcement. I directly supervised approximately fifteen employees in two separate sections, the International Money Laundering Section and the Counter-Narcotics Section. I also had oversight responsibility for numerous large projects for the U.S. Customs Service, FINCEN and OFAC. I held this position from November 2001 through November 2002.
- At the United States Attorney's Office, I managed cases and supervised agents and junior AUSAs, on occasion. The extent of the supervision depended on the case. I held this position from November 1999 through November 2001.

In terms of law enforcement experience, I have worked in law enforcement since January 1998. As described more fully in my answer to question 3 above, my law enforcement expertise includes my work as an Assistant United States Attorney, Associate Independent Counsel, Deputy Assistant Secretary, Chief of Staff to the Criminal Division, and Assistant Secretary of Commerce. The wide variety of law enforcement experiences that I have had helped shape my view that all players at the table provide significant assistance and value, and provides me insight to the perspectives that various agencies have on how to accomplish the same goals.

III. Policy Questions

General

11. Department officials have spoken only in broad terms about their plans and efforts to improve our immigration system in connection with the results of the recent Second Stage Review. Secretary Chertoff described the need for a high level plan for Border Control and Immigration Enforcement that would integrate situational awareness, infrastructure changes, and additional resources.
 - a. How do you plan to further integrate the improvements called for in the Second Stage Review within ICE?

RESPONSE: If confirmed, I will work to strengthen our border security and interior enforcement, and working with the Secretary and his team will implement the Secretary's comprehensive border enforcement reform measures as those plans are developed and initiated.

- b. How do you plan to evaluate the effectiveness of the improvements called for in the Second Stage Review?

RESPONSE: The Secretary announced the Second Stage Results on July 13th, 2005, and indicated that in the weeks and months ahead DHS would launch specific policy initiatives to effect improvements on his comprehensive assessment. Once the details are released, and if confirmed, I will be able to address how we plan to implement and evaluate the effectiveness of these initiatives.

12. With the dissolution of the INS and the creation of three separate bureaus responsible for different aspects of immigration law, there is no single official devoted solely to ensuring consistent and coordinated immigration policy and implementation. If confirmed, what steps would you take to ensure more effective coordination between ICE and the other two bureaus?

RESPONSE: I understand that coordination and open communication among the various immigration components of the Department is critical to the fair and effective administration and enforcement of the immigration laws. If confirmed, I will study this issue and will work closely with the relevant policy and operational leadership in the Department to further develop methods of coordination and cooperation on immigration matters within DHS. If confirmed, I will ensure that communication with Customs and Border Protection (CBP) and Citizenship and Immigration Services (CIS) continues to remain open and is strengthened in areas where improvements are necessary. I have already spoken with the Commissioner of CBP and plan to speak with the Acting Director of CIS soon to open a direct line of communication to address operational issues and management matters of mutual concern.

Additionally, the Secretary as a result of his 2SR Review has announced plans for the creation of a central policy office with an Under Secretary for Policy. It is my understanding that this office will have an important role in setting and coordinating immigration policy within the Department. If confirmed, I will work closely with that office to ensure that the Secretary's immigration policies and priorities are implemented.

Finally, the Department of Justice plays a critical role in ensuring effective enforcement of our immigration policy, by, among other things, prosecuting criminal immigration cases and handling immigration administrative appeals in federal circuit court. If confirmed, I would work closely with the Justice Department components that work on these issues, to ensure that the inter-Department coordination is also strong.

13. Last year, the Center for Strategic and International Studies (CSIS) and the Heritage Foundation released a joint report suggesting that, while DHS succeeded to some degree in consolidating agencies with overlapping missions, it fell short in the area of border and immigration security. In particular, it cited overlap and lack of a clear delineation of responsibilities between U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE). The report concluded that the split of responsibilities between CBP and ICE was done without a compelling reason, and recommended merging the two organizations. Since then, the merger proposal has been the subject of much discussion. Some have argued that such a reorganization would serve to consolidate and strengthen agencies with overlapping missions, and would bring together under one roof all the tools of effective border and immigration enforcement. In January, the DHS Office of Inspector General began an assessment of whether it makes sense to merge CBP and ICE. That report should be released soon.

1. What is your view of the merits of this proposal?

RESPONSE: On July 13th, 2005, the Secretary, as part of his comprehensive Second Stage Review, decided that it was in best strategic and operational interest of DHS to allow CBP and ICE to remain as separate organizations. I would expect ICE to continue to work to support the Secretary's vision of DHS operations, policies, and organizational structure.

I look forward to reviewing the OIG's final report, and will carefully review it at that time.

2. Are there circumstances under which you believe that it would be particularly advantageous or disadvantageous for ICE and CBP to merge? Please explain.

RESPONSE: Please see response in 13(1).

3. Most recently, Secretary Chertoff, through his Second Stage Review, determined that, instead of merging CBP and ICE, they will be pulled out from under a common directorate (Border and Transportation Security) and further separated by having them report to the Secretary independently. Do you believe that separating CBP and ICE will make DHS more efficient and stronger in addressing customs and border and immigration challenges? Please explain.

RESPONSE: I understand that the Secretary made a determination that ICE and CBP can achieve efficiencies and support each other's core mission without consolidation. I believe ICE should be committed to working closely with CBP and other DHS entities to address customs, border and immigration challenges.

4. In addition, there continue to be complaints from some legacy Customs officials about the fact that ICE adopted what they refer to as "the worst management practices" of INS. These officials remain concerned that the division of Customs enforcement from Customs inspections has hampered their mission, as well as of what they regard to be the dysfunctional management practices adopted from INS. Do you believe that it would be important to examine these complaints and what would be your criteria for such a re-examination?

RESPONSE: If confirmed, I will carefully examine the current management practices within ICE, and will address these and other concerns that staff may have. I am committed to ensuring that ICE adopts a "best practices" approach to the management of the agency.

14. As you know, Secretary Chertoff plans to create a new policy office to coordinate and help set policy for the entire Department. Please describe your understanding of what this office will do and, specifically, how it will relate to ICE and to your own duties to set

policy within the agency. What guidance or support would you seek from this office?

RESPONSE: The Secretary announced the creation of a central policy office led by an Undersecretary of Policy. My understanding is that this new directorate will plan and monitor critical department policies. If confirmed, I will support this office to strengthen the Department's overall policy response to threats and vulnerabilities in the homeland, as well as to effectively implement immigration policies and priorities.

15. As you are doubtless aware, ICE has suffered from serious financial problems that forced a hiring freeze and created other operational difficulties. Although the Department has moved to address some of these financial problems, it appears that the issues are far from fully resolved. For instance, DHS Inspector General Richard Skinner recently told a congressional committee that significant accounting discrepancies persist at the agency. And while Department officials say the situation is not as grave as Skinner's testimony suggests, they concede that it will take time to fully remedy ICE's financial weaknesses.

1. What experience do you have that would help you improve the financial management at ICE?

RESPONSE: My experiences managing tight budgets at Commerce and Justice will certainly aid me in working to improve the financial management issues at ICE. It is my belief, however, that part of being an effective manager is hiring an extremely strong and talented team, and motivating current employees to perform at their highest levels. I have substantial experience in that area, and will use those skills to evaluate ICE's financial management employees. If confirmed, one of my first priorities will be to ensure that ICE hires strong financial leadership, including a permanent Chief Financial Officer, with a long history and solid track record of managing a substantial budget.

2. What priority would you place on resolving these financial management issues and what initial steps would you take to assess the problems and implement improvements?

RESPONSE: I am very concerned about the financial management difficulties that have affected ICE during the past several years, and I will make it a high management priority to resolve them. As initial steps toward improvements, I will name a permanent Chief Financial Officer. I will also review recent financial management reviews and auditor reports, and associated recommendations, and will then seek to institute "best management" practices that are responsive to the recommendations and other financial management issues facing the agency.

Detention and Removal

16. Recently, the Acting Director of ICE's Detention and Removal Operations testified that the ability to detain aliens apprehended at the border while admissibility and identity is determined, as well as to quickly remove those aliens, is a necessity for national security and public safety. However, the Chief of the Border Patrol testified at the same hearing that due to a lack of detention space, hundreds of undocumented aliens apprehended from countries other than Mexico have been released into the U.S. pending their removal hearings. Many, if not most, of these aliens fail to appear for these hearings, adding to the already large alien absconder population

1. What are your views on the importance of detaining aliens from countries other than Mexico that are apprehended at the border?

RESPONSE: If confirmed, this is an issue I will study closely. It is my understanding that national security cases and criminal aliens are DHS priorities in immigration enforcement. I have been informed that ICE has been operating at 100% of its detention capacity. If confirmed, I will work closely with our law enforcement partners inside and outside of DHS to continue to improve upon our immigration and border enforcement efforts.

2. What additional actions do you believe are necessary with respect to detaining undocumented aliens while admissibility and identify are determined?

RESPONSE: Detention and removal resources are critical to carrying out DHS immigration enforcement mission. If confirmed, I will carefully consider this issue.

3. What additional actions do you believe are necessary to ensure that those aliens who are released report for their immigration hearings?

RESPONSE: I understand that ICE is exploring several operations, programs and initiatives to ensure that aliens who have been released report for their immigration hearings. If confirmed, I will review these efforts carefully and make improvements where necessary.

Alternatives to Detention

17. Recognizing that it is cost-prohibitive to detain all individuals who are undergoing immigration removal hearings, and that we must utilize available detention beds for those who pose a risk to the community or present a flight risk, Congress annually appropriates funds for alternatives to immigration detention.

1. What specific alternatives to detention would you implement this year?

RESPONSE: I understand that Alternatives to Detention can provide effective tools to ensure that aliens appear for their immigration hearings and are ultimately removed. I will study these programs and initiatives and adopt measures that strive to ensure aliens released from ICE custody appear at their immigration hearings.

2. One program being developed by ICE on a limited basis is the Intensive Supervision Appearance Program (ISAP). Would you support expanding ISAP to other areas of the country that have historically low parole rates such as in New York and the District of Columbia?

RESPONSE: I am informed that ISAP is now located at eight pilot sites (Baltimore, Miami, Philadelphia, St. Paul, Kansas City, Denver, San Francisco and Portland, OR). If confirmed, I will review this program with Detention and Removal staff and determine how to make the most effective use of this initiative.

3. How would you ensure that alternatives to detention programs are administered by trained and experienced staff?

RESPONSE: Please see the response to question 17(2).

Detention Standards

18. The ICE Detention Standards for aliens in ICE's care and custody are intended to provide for uniformity in conditions of confinement for detainees. However, because these Standards were promulgated as agency guidelines rather than binding regulations, their implementation and enforceability has reportedly been limited. Additionally, DHS reportedly is short-staffed on monitoring and implementing these Standards.

1. What steps would you take to improve compliance with and implementation of the ICE Detention Standards?

RESPONSE: It is my understanding that the Detention Management Control Program (DMCP) was created in January 2002 to ensure a consistent policy approach for the implementation and application of the National Detention Standards to aliens in custody. Conditions of confinement issues are vital and I will work to ensure the safe secure and humane treatment of detainees. If confirmed, I plan to carefully review this program and will make improvements where necessary.

2. Do you support putting the ICE Detention Standards into regulations? If not, why not?

RESPONSE: If confirmed, I will carefully review the most appropriate method to ensure compliance with national detention standards.

3. Should the detention standards be applied to federal Bureau of Prison facilities holding ICE detainees? Why or why not?

RESPONSE: The Bureau of Prisons is within the Department of Justice and they are in the best position to respond to this question. It is my understanding that the Bureau of Prisons has a well-established inspections program which monitors compliance with Bureau of Prisons policy and procedure.

19. What would be your policy for the detention of family units? Do you intend to continue the DHS practice of separating children from their parents, when families are apprehended at the Southern border and detained pending expedited removal proceedings?

RESPONSE: I recognize the need to provide not only safe, but appropriate detention facilities for aliens whose immigration cases are being adjudicated before the immigration courts. This is particularly true when juveniles are taken into custody. If confirmed, I will evaluate the need for specialized capacity and how resources are allocated and distributed to these needs.

Relationships with States and Localities

20. Section 287(g) of the Immigration and Nationality Act allows the Secretary of Homeland Security to enter into agreements with state or local governments that would permit qualified officers or employees of the state or locality to perform certain functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. Currently, only a few such agreements are in place.

1. What is your view on authorizing state or local officials to perform the functions of an immigration officer?

RESPONSE: State and local law enforcement play a critical role in the homeland security mission. In the normal course of events, state and local law enforcement officials are the first responders to any incident or attack against the United States. They are also likely to encounter foreign-born criminals and immigration violators during the course of their daily duties. I am advised that the Department makes immigration status information available to state and local law enforcement through the ICE Law Enforcement Support Center within minutes of any query and that ICE encourages its officers at all levels to engage

in partnerships with State and local law enforcement agencies through a variety of partnership arrangements because this is the best way to increase the effectiveness of our organizations. I agree with Secretary Chertoff's position that we need to look carefully at whether and how local police are involved in immigration matters and would want to review this matter further if I am confirmed.

2. Under what circumstances should state or local officials be allowed to perform immigration officer functions?

RESPONSE: Please see the response in 20(1).

21. There have been ongoing debates as to whether local law enforcement officials should take a more active role in enforcing immigration civil law within our borders. One major component of the debate is whether enforcing civil law would be detrimental to community-based policing. Another is whether ICE has the capabilities and resources to detain those arrested or held by local law enforcement for possible civil violations. What are your views on the appropriate role of local law enforcement?

RESPONSE: Please see the response to question 20(1). I agree with Secretary Chertoff that there are legitimate concerns that immigration enforcement may have an adverse effect on law enforcement efforts in certain communities. These issues warrant further examination and study. If confirmed I will review this issue.

Employment Eligibility and Verification

22. The Census Bureau has estimated that at least 8 million undocumented aliens live in the U.S. Other estimates place this number at 10 million. Many, if not most, undocumented aliens come to the U.S. for employment purposes. The effectiveness of the employment verification process established by the 1986 immigration law to prevent employers from hiring undocumented aliens has been limited. One model currently being tested is the Basic Pilot Program, an employment confirmation system administered by U.S. Citizenship and Immigration Services and the Social Security Administration. At present, this employers' participation is voluntary.

1. In your opinion, what if anything should be done to enhance the employment verification process and/or the employer sanctions provisions of the law in order to prevent employers from hiring undocumented aliens?

RESPONSE: I understand that the Basic Pilot Program is a good start towards a more effective verification system. If confirmed, I will carefully review the merits of this program.

2. Do you believe that making employer participation in the Basic Pilot Program compulsory would be beneficial?

RESPONSE: I have not personally had an opportunity to study this issue but would be pleased to do so if confirmed.

23. The large number of documents that are acceptable proof of identity under the worksite enforcement program makes it very difficult for an employer to verify the validity of documents presented by potential employees, and for ICE to establish that an employer knowingly hired an unauthorized worker. Reportedly, DHS has been considering reducing the number of acceptable documents but has not yet issued new regulations to accomplish this.

- a. Do you believe expedited reform of the employer verification process would address this issue? Please explain.

RESPONSE: If confirmed, I will review the existing and proposed reforms to the employer verification process, and make suggestions for improvement.

- b. Do you favor the use of an employment verification program that allows employers to electronically verify the work authorization status of potential employees? Please explain.

RESPONSE: See response in section 23 (1).

24. Canadian modular home manufacturers are permitted to ship modular homes manufactured in Canada into the United States. However, modular housing manufacturers in the Northeast have reported that Canadian workers entering the U.S. as business visitors to deliver these homes have been going beyond delivery and have been setting or installing that housing at the construction site in the U.S. These workers include operators of the vehicles transporting the homes and escort personnel accompanying the shipments to their destination. This practice appears to violate existing immigration law, including a prohibition against business visitors engaging in construction work.

To address the issue, CBP is currently revising its guidance to clarify that setting or assembling prefabricated housing, including modular homes, is not permitted in business visitor status. However, CBP has also stated that, when questioned, these workers declare at the border that they are entering to deliver modular housing, with no mention of installing or assembling it at the construction site. Due to the inability of CBP to identify or prevent such occurrences once the workers have crossed the border, the burden of responsibility necessarily defaults to ICE.

1. How would you coordinate ICE's efforts with CBP to monitor the activities of such foreign workers once they cross the border and ensure that they are not engaged in activities beyond the scope of their admission?

RESPONSE: If confirmed, I believe it is important for ICE and CBP to jointly share intelligence and other leads and respond effectively to incidents of mutual concern.

2. Would you commit ICE to work with CBP and the U.S. modular manufacturing industry to resolve this issue, including enforcement of agency guidance explicitly prohibiting the setting or assembly of prefabricated housing or parts by workers entering as business visitors?

RESPONSE: Companies that encourage or induce individuals to enter the U.S. and violate the terms of their visas are subject to criminal and civil penalties. If confirmed, I will evaluate all options to ensure compliance with the law.

3. Recognizing that ICE will not monitor to its final destination every modular shipment that enters the U.S., in light of your experience as a federal prosecutor, do you believe that aggressive prosecution of such violations is appropriate, not only for purposes of upholding the law but also to serve as an effective deterrent to prospective violators?

RESPONSE: I believe that the prosecution of egregious worksite violators does serve as an effective deterrent to prospective violators.

4. With the potential of homes entering the U.S. minimally checked and accompanied by individuals whose activities exceed the scope of their admission, it is not difficult to imagine a conduit of illegal drugs, contraband, or an opportunity for terrorists seeking easy access across our borders. What action would you direct ICE to take to address this concern?

RESPONSE: I believe that ICE should address potential vulnerabilities to community safety and national security, and should work closely with CBP to identify and remove threats once they are known.

Immigration Fraud

25. Many believe that ICE investigates too few immigration benefit fraud cases. Recognizing that ICE's investigative resources are limited, it is nonetheless the case that as a result of ICE's failure to investigate cases of suspected immigration benefit fraud referred to it by CIS, an ineligible alien could erroneously be granted a work permit, permanent residency, or U.S. citizenship.

- a. If confirmed, what changes do you intend to make in order to improve communications with CIS in this and other areas?

RESPONSE: Immigration benefit fraud is a serious threat to the integrity of the immigration system and a potential vulnerability that can potentially be utilized by criminals and terrorists to gain entry into our country. If confirmed, I will work closely with CIS to combat immigration benefits fraud and make every effort to restore the rule of law and integrity to our system of immigration.

- b. Where among ICE's investigative priorities do you believe that immigration benefit fraud should fall?

RESPONSE: If confirmed, I will address all critical vulnerabilities including those posed by Identity and Benefit Fraud cases.

US-VISIT

- 26. Each year, millions of visitors, foreign students, and immigrants enter the United States on a legal temporary basis. Although the majority of visitors depart on time, significant numbers of visitors overstay their authorized periods of admission. US-VISIT is a multi-billion, multi-year program intended to enhance national security and contribute to the integrity of the U.S. immigration system by, among other things, identifying foreign nationals who have overstayed or violated the terms of their visit.

- a. What are your plans to work with other DHS components to successfully implement US-VISIT so that DHS can accurately count the number of overstays, identify foreign nationals who overstay or violate the terms of their visit, and enforce relevant laws and regulations?

RESPONSE: I understand that US-VISIT is a key tool in immigration enforcement and national security. I look forward to working with all of the components involved in US VISIT to ensure this system achieves its maximum potential.

- b. Do you believe that DHS needs to develop and implement a nationwide enforcement strategy for addressing overstay issues once US-VISIT is operational? If so, what are your plans to accomplish this objective?

RESPONSE: Please see the response in question 26(a).

- c. What assessments, if any, do you plan to initiate to ensure that ICE is fully staffed to address overstay issues as US-VISIT becomes operational?

RESPONSE: It is my understanding that ICE received 51 positions in fiscal year 2004, and 130 positions in fiscal year 2005 to address immigration status violators. The positions were used to create the Compliance Enforcement Unit (CEU) at ICE headquarters, and deployed to ICE field offices to investigate immigration status violators. If confirmed, I will evaluate how these positions can most effectively support border and interior enforcement efforts.

- d. Until US-VISIT is operational, what plans do you have to address overstay issues? Please describe any plans you have to systematically identify overstays, develop short and long-term enforcement strategies, and assess and identify staffing needs?

RESPONSE: I have not personally had an opportunity to study this issue. If confirmed, I will be pleased to review this matter and make assessments as to how US-VISIT can be incorporated into a comprehensive immigration enforcement strategy.

Personnel

- 27. Currently, uniformed inspectors at ports of entry and Border Patrol agents are in Customs and Border Protection while investigators are located in ICE's Office of Investigations. Some have likened this to having street cops and detectives in separate police departments. What is your view on whether uniformed officers and investigators need to be in the same organization under a unified command structure?

RESPONSE: Please see the response I submitted to question 13 (1).

- 28. A major challenge since DHS was established has been ICE's ability to form a single, cohesive corps of ICE investigators. Successfully integrating legacy INS and legacy Customs investigators into ICE has been hindered by the fact that they came to DHS from different organizational cultures, operated under different policies and procedures, and had used different automated systems for administrative services. GAO reported in October 2004 that these posed ongoing problems to integrating the two types of investigators.

- 1. What actions do you believe should be taken to ensure that ongoing divisions between legacy INS and Customs agents are resolved?

RESPONSE: I have been informed that many of the integration issues have been resolved. If confirmed I will review other key integration issues in the future to ensure that merging of these two cultures continues.

- 2. What actions do you believe should be taken to ensure investigative offices have appropriate national guidance to follow, rather than simply using policies that

existed under legacy Customs or INS?

RESPONSE: It is my understanding that national guidance continues to be issued to investigators in the field as memoranda, handbooks, directives, and through training. Organized and effective communication of national policy and guidance is critical to the success of any organization and if confirmed I will review this matter to ensure that field offices are given the appropriate level of policy guidance.

29. A recent survey of DHS employees identified morale as an area for improvement. In a number of the categories surveyed, DHS employees' responses were more negative than those expressed by employees from other agencies. What actions do you believe should be taken to address the root causes of these reported problems and to improve employee morale in ICE?

RESPONSE: ICE is a great agency filled with dedicated investigators, officers, and support staff. The agency serves a critical mission, and we must have excellent staff to accomplish the mission. I am very concerned about the reported morale problems facing ICE over the past couple of years, and if confirmed will make it a high management priority to address them. I will seek to institute "best management" practices that are responsive to both field and headquarters staff, and will work to address the underlying problems that impact morale.

Intelligence

30. Having good intelligence information is key to ensuring our national security. ICE's Office of Intelligence covers a wide range of law enforcement areas, including: human smuggling and trafficking; money laundering and financial crime; drug smuggling; terrorism; criminal aliens; air and marine smuggling; cyber crimes; identity fraud and document fraud; arms trafficking and technology transfers; commercial fraud; mass migration and conditions affecting immigration; security at federal facilities and other critical infrastructure sites; and airspace security.

1. What do you think needs to be done to improve the ability of ICE to gather, analyze, and disseminate high quality, timely, and useful intelligence information to address these law enforcement areas?

RESPONSE: Secretary Chertoff has stated that "systematic intelligence lies at the heart of everything we do." If confirmed, I will work to improve our intelligence capabilities to support the DHS mission.

2. What challenges does ICE face in having an intelligence mission that overlaps with that of other agencies, particularly the FBI?

RESPONSE: ICE mission priorities transcend the border, and include issues and venues in foreign countries as well as criminal and terrorist activities inside the U.S. I am committed to address challenges and any barriers to both receiving and sharing information with other agencies, including the FBI.

3. What should ICE's relationship be with the Intelligence Community, including the National Counterterrorism Center? How can information-sharing between the Intelligence Community and ICE be improved?

RESPONSE: If confirmed, I will work to support the Assistant Secretary for Information Analysis. Secretary Chertoff has indicated this division "will provide a primary connection between DHS and the IC."

4. What should ICE's relationship be with the Information Analysis (IA) Office? Should IA set information technology, security, and other requirements and protocols related to intelligence for ICE? Should IA be the conduit through which ICE communicates with the Intelligence Community?

RESPONSE: Please see the response in question 30(3).

Immigration experience

31. ICE is the federal agency primarily responsible for enforcing immigration law, including the complex provisions of the Immigration and Nationality Act regarding apprehension, detention and removal of aliens. What specific background and experience with respect to immigration law and immigration enforcement affirmatively qualify you to lead ICE as Assistant Secretary of DHS?

RESPONSE: Immigration issues intersect with many of the law enforcement issues I have worked on for the last several years. Among other examples, in terms of criminal immigration enforcement, as an Assistant United States Attorney in Eastern District of New York, I had the opportunity to work with INS agents on a number of criminal immigration cases, including smuggling and document fraud cases. At the Department of Treasury, I also worked on some immigration issues that intersected with money laundering issues, particularly those relating to the acceptability of alternative forms of identification for undocumented persons, and cooperation between the United States and the Mexican government. At the Justice Department, I worked with the Criminal Division sections to encourage enhanced enforcement in human smuggling and other serious immigration violations.

Enforcement priorities

32. Of the approximately 8 to 10 million undocumented aliens living in the United States, most come to the United States seeking employment, approximately 400,000 are

absconders from final deportation orders, tens of thousands are convicted criminals, and an unknown number have links to terrorist organizations. Given the available resources for immigration enforcement, how would you prioritize ICE enforcement resources in its efforts to pursue violators from the different groups mentioned?

RESPONSE: The Secretary as a result of the 2SR review has announced plans to strengthen interior enforcement and reform immigration processes. If confirmed, I will work to restore integrity and the rule of law to the immigration system and will support all policy initiatives that emanate from the Secretary's plan, and ensure that ICE's priorities fit within those overall plans.

Report of US Commission on International Religious Freedom

33. On February 8, 2005, the US Commission on International Religious Freedom released a Congressionally authorized report on how expedited removal procedures were affecting asylum seekers. The Commission report documented that asylum seekers are detained by DHS in harsh maximum security correctional facilities, and are often housed in the same cellblocks or in the same cells as convicted criminals. The study noted that the ICE detention standards were written with criminal aliens in mind - not asylum seekers. The Commission reported that many of the detainees, who often had been tortured or persecuted in their home countries, were further traumatized by the conditions of confinement, and some even said that the conditions were one of the factors that they led them to terminate their applications for asylum.

1. Based on the Commission's report, do you think conditions of confinement should be improved for non-criminal asylum seekers? Please explain your answer.

RESPONSE: I understand that DHS is still in the process of reviewing and preparing a comprehensive response to the Commission's recommendations. If confirmed, I will strive to maintain safe, secure and appropriate conditions of confinement for all detained aliens within ICE custody, including those individuals seeking asylum.

2. What, if anything, would you do to improve conditions of confinement for asylum seekers?

RESPONSE: I understand that the Detention and Removal Operations within ICE monitors and assesses detention operations through the Detention Management and Control Plan (DMCP). I understand that this plan seeks to both improve conditions of confinement and also provide uniformity of services for all its detainees, including asylum seekers. If confirmed, I will review this plan with Detention staff and strive to provide a safe and humane environment for all detainees.

3. The Commission recommended that non-criminal asylum seekers who must be detained should be subject to alternatives to detention or be held in secure, but non-jail like facilities - such as the one used by ICE in Broward County Florida - rather than the jails and jail-like centers which the Service currently relies upon. Do you agree with this recommendation? If so, what steps would you take to develop better alternatives to jail-like facilities?

RESPONSE: Please see the response in question 17(1). If confirmed I will study this issue and examine the possibility of expanding the use of alternatives to detention and less restrictive detention facilities where appropriate.

34. The Commission's study also found wide variations in releasing aliens from detention prior to their asylum hearing. In New Orleans, New York and New Jersey, nearly all asylum seekers were detained for months until their asylum hearing (New Orleans 99.5%, New Jersey 96%, New York 92%). But in other places like San Antonio, or Harlingen, almost all asylum seekers were released (San Antonio 94%, Harlingen 98%, Chicago 81%). The Commission recommended that DHS issue regulations to ensure that asylum seekers are released from detention by local officials when they meet the official parole criteria. Do you agree with this recommendation? If so, what steps would you take to implement it?

RESPONSE: I have not personally had the opportunity to study this issue. I understand that DHS is in the process of reviewing all of the Commission's recommendations. If confirmed, I plan to carefully review this issue and determine, in cooperation with other interested components within DHS, the reasons for such disparities and the most appropriate method to provide specific guidance regarding asylum seekers.

35. During the Committee's consideration of the nomination of Michael Jackson to be Deputy Secretary of DHS, Mr. Jackson promised to review the recommendations of the US Commission on International Religious Freedom and to develop "a considered Departmental response."

1. Has DHS developed a response that comprehensively addresses the Commission's findings? Please provide details of any Department actions taken in response to the Commission's report.

RESPONSE: It is my understanding that DHS is still carefully reviewing the Commission's findings and recommendations and has not yet developed a comprehensive response. As a result of his 2SR Departmental Review Secretary Chertoff has announced that he has adopted one of the Commission's recommendations to create a high level advisor position to coordinate asylum and refugee issues throughout the Department.

2. Will you commit to helping ensure that the Department does develop a Departmental response that addresses the problems documented by the Commission?

RESPONSE: If confirmed, I will make it a priority to work with all relevant DHS entities to comprehensively address the Commission's findings and recommendations.

3. Will you commit to helping ensure that DHS informs this Committee of its response to the Commission's report, including all actions taken to address problems documented by the Commission?

RESPONSE: If confirmed I commit to keeping this committee fully informed of all actions taken and responses to the Commission's report.

Other DHS officers

36. The Intelligence Reform and Terrorism Prevention Act of 2004 included provisions clarifying the functions of the Officer for Civil Rights and Civil Liberties and ensuring effective coordination with the Privacy Officer. It also instructs the DHS Inspector General to designate a senior official within his or her office to ensure coordination of any investigations of abuses and see that the public is fully informed of complaint procedures.

1. Would you ensure the Office of Civil Rights and Civil Liberties is consulted when immigration enforcement policies affecting civil rights and civil liberties are being made?

RESPONSE: I believe that all officials and components within DHS, including ICE, have a duty not to violate civil rights and civil liberties. If confirmed, I would work closely with the Officer for Civil Rights and Civil Liberties to ensure full cooperation in carrying out the Department's mission.

2. What steps would you take to ensure effective coordination and cooperation with the Officer for Civil Rights and Civil Liberties, the Privacy Officer, and the Inspector General?

RESPONSE: This is a question that requires significant study to address fully. If confirmed, I will quickly reach out to the Officer for Civil Rights and Civil Liberties, the Privacy Officer, and the Inspector General to open lines of communication and discuss the methods through which we could best cooperate and coordinate our efforts. If confirmed I would make it a priority to coordinate our efforts with these other critical components of the Department.

Restriction of Womens' Asylum Claims

37. The case of Rodi Alvarado, known as Matter of R-A-, is currently pending before the Board of Immigration Appeals awaiting a regulatory proposal that is still under review at DHS. Prior to leaving office, Attorney General Ashcroft remanded the case back to the Board of Immigration Appeals to issue a decision once regulations were issued governing such cases. The case has a complex procedural history, but the underlying issue is whether the U.S. will offer asylum protection to women fleeing domestic violence in their home countries. Ms. Alvarado is fleeing brutal spousal abuse in Guatemala, a country where she was unable to gain the protection of the authorities, but the decision and rules laid out could have an impact on women and girls fleeing trafficking for prostitution, sexual slavery, 'honor' killings and other serious harms. The Department of Homeland Security has recently made clear that the particular facts of Ms. Alvarado's case qualify her as a refugee, and support for her case includes a broad array of organizations. Yet the regulations have yet to be finalized, and Ms. Alvarado remains in legal limbo.

1. What are your views on the issues raised by this case?

RESPONSE: I have not personally had an opportunity to study this particular case or the issues involved. I am informed that the Department of Homeland Security argued that Ms. Alvarado should be granted asylum because of the unique and compelling facts present in her particular case. If confirmed, I would work to ensure that the appropriate legal standards are fairly applied to all asylum applicants.

2. Would you work to finalize the regulations to ensure that women who flee from gender harms can, in appropriate cases, receive asylum in the United States?

RESPONSE: I have not personally had an opportunity to study the issues involved in this rulemaking initiative. If confirmed I will make it a priority to work in close coordination with the other Department of Homeland Security components and federal agencies involved to finalize these regulations.

ICE agents posing as OSHA officials

38. On July 6, 2005, Immigration and Customs Enforcement (ICE) officials represented themselves as Occupational Safety and Health Administration (OSHA) employees as part of an immigration raid conducted at Seymour Johnson Air Force Base in Goldsboro, North Carolina. According to various news reports, Immigration and Customs Enforcement (ICE) officials lured immigrant employees of several subcontractors at Seymour Johnson Air Force Base to a supposed mandatory health and safety OSHA meeting by posting fliers, in English and Spanish. Once the meeting began, officials

present at the meeting informed the workers in attendance that they were not OSHA representatives, but immigration officials. Forty-eight workers were arrested, including at least one U.S. citizen who was released once he verified his immigration status.

The United States Labor Department as well as North Carolina's Labor Department criticized the sting, suggesting that it would make immigrant workers distrust safety officials at a time when safety agencies are stepping up efforts to reduce the disproportionately high injury rate among Hispanic workers. A spokeswoman for the Department of Labor stated, "This is not something we were involved in, and we do not condone the use of OSHA's name in this type of activity." Twenty-five congressmen also sent a letter to Secretary Chertoff complaining about the incident; the letter stated: "[a]t a time when injury and fatality rates among minority workers are soaring, it is unconscionable that ICE would use a ruse that shatters the trust and confidence that OSHA has built with the immigrant community to keep workers safe." The Representatives noted that the ICE tactics "do not comply with OSHA's policy of keeping the identity of those who file complaints confidential and of not collecting data on citizenship status." An ICE spokesman defended the tactic and said ICE was "putting in place procedures to ensure appropriate coordination."

1. Do you believe that having ICE enforcement agents pose as OSHA officials or other health and safety officials is an appropriate tactic? Why or why not?

RESPONSE: As a nominee, I am not privy to the specific operational and coordination issues that relate to the matter addressed in this question. However, as a former prosecutor, I know that ruses can be an effective law enforcement tool that minimize risk to offenders and maximize safety of officers. It is equally important to highlight that I fully appreciate the need to coordinate with federal, state and local agencies, as well as the private sector, when conducting these types of operations.

2. What would you do to clarify ICE policy on the use of this tactic?

RESPONSE: If confirmed, I will carefully review the policy and guidance on the use of ruses with the ICE Office of Investigations. Coordination is central to the success of these types of law enforcement operations and any policy should ultimately weigh the affected agency or entity's equities and concerns against the inherent advantages that the ruse may offer.

3. Do you believe that it's important that undocumented immigrant workers are able to report unsafe working conditions to appropriate federal and state officials without fearing that coming forward will lead to their being deported? Please explain your answer.

RESPONSE: Please see the response above in 38 (2).

245(I)

39. In 1994, a provision was added to the Commerce, Justice, State appropriations bill that would allow aliens who did not currently have legal status to adjust to legal permanent resident without returning to their home country to do so. This provision was extended until April 30, 2001. There are still timely filed applications pending at the Department of Labor which have not been processed through no fault of the alien. Aliens who have applied under this provision are at risk of deportation even before a resolution of their application can be reached at the Department of Labor.

1. Do you believe that an individual who is qualified for relief under the Immigration and Nationality Act should be deported while their application is pending through no fault of their own?

RESPONSE: I am informed that aliens who are placed into removal proceedings, who have made good faith and timely applications for labor certifications with the Department of Labor (DOL), and who, through no fault of their own, are still awaiting adjudication of those applications, do not face immediate deportation in most circumstances. It is my understanding that ICE, as a general rule, does not deport aliens who have shown they have legitimate avenue for relief open to them. Accordingly, in this situation, ICE individually evaluates the case to determine whether the alien has shown that relief is available to him or her under INA § 245(i), and that the alien is statutorily eligible to apply for the designated relief. ICE also ensures that no negative factors exist which would show the application was not made in good faith. Once that is established, ICE can request that the case be continued or administratively closed until the DOL has adjudicated the labor certification application.

2. How do you think we should address this situation?

RESPONSE: I have been informed that the current process of case-by-case evaluation allows for effective and just results. If confirmed, I would be pleased to study this issue to determine whether there are any other additional means to address this situation.

Legal Representation of Immigrants in Removal Proceedings

40. According to the Executive Office of Immigration Review (EOIR) only about 10% of detained immigrants are represented by counsel. Reportedly, aliens who are represented by an attorney in Expedited Removal cases are granted relief 25% of the time in contrast to 2% of the time for those without representation. Federal law allows aliens in removal proceedings to be represented by counsel but mandates that no public funds may be used to pay counsel.

Would you, as Assistant Secretary for Homeland Security, look into programs in which attorneys offering pro bono representation can be matched up with aliens who can not afford counsel in order to provide representation for those immigrants facing removal?

RESPONSE: When an alien is represented by counsel it benefits both the alien and the government. If confirmed I will look into programs, in cooperation with the Executive Office for Immigration Review, that will enable aliens to obtain representation.

Money Laundering and Terrorist Financing

41. For the first year after 9/11 you served as Deputy Assistant Secretary at Treasury in charge of money laundering and financial crimes. Therefore, you are aware of the strong financial tracking and anti-money laundering capabilities of FinCEN, Secret Service, and legacy Customs.

1. How would you assess Treasury's efforts in the campaign against terrorist financing? What lessons did you learn from your efforts at treasury?

RESPONSE: The Treasury Department is in the best position to respond to the first part of the question. Regarding the second aspect of the question, law enforcement is critical in the terrorism fight and can investigate crimes and assist prosecutions. However, when it comes to terrorist financing and money laundering, other stakeholders in the financial system are vital and should be part of the solution. While law enforcement is an important aspect in the equation, the enforcement response works best when combined with regulation, economic sanctions, private sector partnerships and global cooperation.

2. Who is in charge and coordinating the government's efforts against terrorist financing? In your view is that leadership and coordination in the right place?

RESPONSE: I am not aware that there are significant coordination and leadership problems in the government's response to terrorist financing. The Terrorist Financing response requires collaborative-leadership from DHS, Treasury, Justice, State, DOD and our principal intelligence agencies. The National Security Council Terrorist Financing PCC, which brings together high-level expertise from the aforementioned agencies, appears to be the perfect vehicle to coordinate the government wide effort to combat terrorist financing.

3. Will you attempt to involve ICE in a more substantive way in the government's campaign against terrorist financing? If so, what role do you envision for ICE?

RESPONSE: If confirmed, I will carefully review the role of ICE in the terrorist financing domain. Having worked with Treasury before, I am aware that ICE draws on over thirty years of organizational expertise in investigating complex,

international money laundering schemes and combats bulk cash smuggling, trade based money laundering and illegal money service businesses. All these systems are vulnerable to exploitation by terrorists.

4. What accomplishments do you believe have resulted from the government's campaign against terrorist financing? Should the government be more aggressive in the future?

RESPONSE: If confirmed, I will be in a better position to determine how ICE can participate in the campaign against terrorist financing. As a new agency in a newly created Department, I will strive to protect the homeland from terrorists and other criminals by bringing to bear ICE's broad authorities and expertise in the ongoing effort against terrorist financing.

Federal Air Marshals Service

42. Secretary Chertoff recently announced several organizational changes within the Department of Homeland Security, based on recommendations arising from the Second Stage Review. One of those changes would move the Federal Air Marshals Service (FAMS) from ICE back to TSA. According to then Assistant Secretary Michael Garcia, the purpose of transferring FAMS from TSA to ICE in September, 2003 was to "establish an integrated law enforcement presence in the aviation sector" and "enhance ICE's overall law enforcement capabilities and resources to enforce its mission." Another goal was to provide some surge capacity for FAMS when the threat level was raised.

1. How will the proposed transfer of FAMS affect ICE's ability to perform its missions?

RESPONSE: While the proposed transfer ends ICE's responsibilities over aviation security, its mission and the ability to carry out that mission are otherwise unaffected. Because the FAMS' duties have virtually no direct connection with immigration, customs or investigations, it is my understanding that the proposed transfer will have no anticipated impact on ICE's operations.

2. Have ICE law enforcement officers been trained to provide a surge capacity for FAMS? Will ICE law enforcement officers provide a surge capacity for FAMS after the transfer?

RESPONSE: I am informed that approximately 500 ICE Special Agents from the Office of Investigations were trained during FY 2004 to provide surge capacity for FAMS. If confirmed, I will carefully review the surge capacity issue in coordination with other components of the Department to determine the best source for providing surge capacity within the Department, given its overall mission and priorities.

Border Protection Investigations

43. ICE is responsible for investigating incidents which compromise DHS border protection programs, as well as working with Customs and Border Protection (CBP) to ensure Weapons of Mass Destruction (WMD) do not penetrate the U.S. border.

1. What do you believe is ICE's role is in providing border protection and ensuring WMD do not enter the United States?

RESPONSE: If confirmed, I will assess ICE roles and responsibilities (in cooperation with CBP) in providing border enforcement and ensuring that weapons of mass destruction do not enter the United States.

2. How is information about ICE investigations shared with CBP to improve its border protection programs, like the Automated Targeting System, the Container Security Initiative, or the Customs-Trade Partnership Against Terrorism? Are the results of ICE investigations used to refine CBP border security programs?

RESPONSE: I believe that it is imperative that ICE and CBP cooperate and share information to enhance the overall DHS border enforcement response. I plan to evaluate the levels of cooperation on intelligence sharing and mutual support between ICE and CBP if I am confirmed.

3. On both January 15 and again on April 2 of this year upwards of 30 Chinese immigrants were found emerging from containers arriving at the Port of Los Angeles. These incidents appear to demonstrate that serious vulnerabilities remain with U.S. border security programs. Was an investigation of these incidents conducted by ICE? What was the result of any investigation? Was ICE able to learn who was ultimately responsible for these incidents?

RESPONSE: I have no knowledge that there is an investigation underway. If confirmed, I will certainly review the details of these two incidents.

IV. Relations with Congress

44. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

RESPONSE: Yes.

45. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

RESPONSE: Yes

V. Assistance

46. Are these answers your own? Have you consulted with the DHS or any interested parties? If so, please indicate which entities.

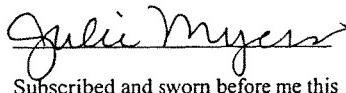
RESPONSE: Some of the questions in this questionnaire cover detailed topics about which I have relatively little in the way of firsthand or definitive knowledge at this time since I am not currently at DHS and do not have access to all internal documents. Accordingly, I worked closely with DHS and consulted with several parts of the Department in order to be responsive to the Committee's inquiries. That said, these answers are my own, and are based upon my understanding of the information provided to me.

V. Assistance

46. Are these answers your own? Have you consulted with the DHS or any interested parties? If so, please indicate which entities.

AFFIDAVIT

I, Julie Myers, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


Subscribed and sworn before me this 12th day of August, 2005.


Notary Public
for the District of Columbia
Comm. expires 1/31/2008

Senator Carl Levin
Pre-Hearing Questions for the
Nomination of Julie Myers to be
Assistant Secretary, Department of Homeland Security

Iraqi Christians and Asylum

1. Due to delays in the immigration process, a country's situation can change from when the alien fled their home country seeking asylum in the U.S. to when they finally receive a hearing before a judge. One such case related to the Iraqi Christians. In the 1990's and up to the removal of Saddam Hussein, Iraqi Christian refugees legally entered the United States and requested asylum. Then in 2003, over 800 families in San Diego, Detroit, Chicago and Texas were informed that their asylum would not be granted because the Hussein Regime and the Ba'ath Party were no longer in power. Therefore, the refugees were to be deported to Iraq immediately.

However, they had set down deep roots and many would be in jeopardy if they returned to Iraq. A number of Iraqi Christians have been kidnaped for ransom and even killed. Business establishments owned by Christians have been bombed, ransacked and pillaged. Iraqi Christian women are not safe in public in many places without covering their faces. Religious services at Christian churches continue to be disturbed.

- a. **Would you support changing asylum rules to reflect that an asylum determination should be judged on conditions that existed in the asylee's home country at the time the asylum application was filed if a reasonable period of time elapsed since the asylee sought asylum, and the asylee has put down roots and become a model resident?**

I have not personally had an opportunity to study this issue. If confirmed I would be pleased to review this issue and work with Congress and the Administration to address the possibility of any changes to the statutes governing asylum and refugee issues.

- b. **Would you support classifying the Iraqi Christians as a low priority removal group in terms of Immigration and Customs Enforcement Officials pursuing their deportation from the U.S.?**

I believe it is appropriate to first focus our law enforcement efforts towards those aliens who may pose a threat to the public safety, such as criminals and terrorists. I am informed that ICE is not currently removing any aliens to Iraq. If confirmed I will see to it that ICE continues to consider and exercise prosecutorial discretion where appropriate in individual cases.



United States
Office of Government Ethics
 1201 New York Avenue, NW., Suite 500
 Washington, DC 20005-3917

Director

July 7, 2005

The Honorable Susan M. Collins
 Chair
 Committee on Homeland Security
 and Governmental Affairs
 United States Senate
 Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Julie L. Myers, who has been nominated by President Bush for the position of Assistant Secretary, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated July 6, 2005, from Ms. Myers to the Department's ethics official, outlining the steps that Ms. Myers will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with the actions she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Myers is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn

Marilyn L. Glynn
 Acting Director

Enclosures

**Post-Hearing Questions Submitted by
Senator Susan M. Collins
For the Nomination of Stewart A. Baker to be
Assistant Secretary (Policy), Department of Homeland Security
September 15, 2005**

General

1. Mr. Baker, if our emergency preparation and response structure is not adequate to deal with a mass disaster – and what I have seen so far does not inspire confidence – then we must realign the policies and resources of the Department to fill this gap. In the long-term, what types of policies do you believe should be implemented to ensure the Department establishes the foundation for a more effective emergency preparedness and response structure?

ANSWER: If confirmed, I expect to work closely with the Secretary and Deputy Secretary to facilitate the establishment of a more effective emergency preparedness and response structure by utilizing resources more effectively. Much of this can be done by a careful implementation of the Second Stage Review. I also expect that additional measures and policy changes may be necessary to cure gaps in our emergency response structure. If confirmed, I am committed to working with Department leadership to resolve these issues.

2. The Homeland Security Act of 2002 gives DHS sole responsibility to identify, assess, and protect the national critical infrastructure that supports our \$11 trillion national economy. The White House underscored the importance of this mission in its National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, published in 2003, by stating that, “it is imperative to develop a comprehensive national approach to protection.” Ten months later, the White House issued Homeland Security Presidential Directive 7, which required the Department of Homeland Security to “produce a comprehensive, integrated National Plan for Critical Infrastructure and Key Resources Protection to outline national goals, objectives, milestones, and key initiatives” by December 17, 2004 – a date that has since long passed. As Assistant Secretary for Policy, what steps will you take to ensure that the National Infrastructure Protection Plan (NIPP) is completed?

ANSWER: I understand that the Department is currently revising the National Infrastructure Protection Plan (NIPP) to further delineate the roles and responsibilities of the federal government, state and local entities, and the private sector. If confirmed, I look forward to reviewing this effort and to working with Department leadership to ensure that the revised NIPP is successfully implemented.

3. Because 85 percent of the Nation's critical infrastructure is privately owned, DHS must work collaboratively with the private sector to improve security. One of the things that we have learned through our examination of chemical security is that some companies have been very proactive in investing in security enhancements for chemical facilities. However, not everyone in the industry is making the same investments and improving security – thus putting companies which are investing in security upgrades at a competitive disadvantage.
- (a) What types of incentives do you think the Department should utilize to encourage the private sector to invest in security?

ANSWER: I am aware of the concern that responsible companies who invest in good security may be disadvantaged as a result. The responsibility and cooperation of the owners and operators of the nation's infrastructure is critical to the success of DHS's effort to implement a national plan to protect that infrastructure. If confirmed, I look forward to reviewing this issue and to examining what incentives or disincentives could further the security of the nation's infrastructure.

- (b) Do you think DHS needs regulatory authority to improve security for the different critical infrastructure sectors that are not currently subject to a Federal security law?

ANSWER: As the Committee is aware, the Department is currently working to identify an appropriate regulatory framework to address the security of the chemical sector. If confirmed, I look forward to reviewing this issue and the security issues related to the 17 critical infrastructure sectors and key resources.

Chemical Security

4. During the past few months, this committee convened four hearings on enhancing the security of chemical facilities across the Nation. Chemical security is a very high priority for me and one that I intend to pursue this fall in addition to the Committee's investigation into Hurricane Katrina and its aftermath. We are in the process of drafting a bipartisan chemical security bill, which would give DHS regulatory authority for critical infrastructure protection. In your role as the Assistant Secretary for Policy, presumably you would be involved in formulating this regulatory framework for the Department.

In your opinion, what types of authorities do you think DHS will need in order to enforce a security regime?

ANSWER: If confirmed, I will further review this issue and work with Department leadership to craft appropriate policy and response to this important issue.

5. What principles do you believe are important to include in a chemical facility security regulatory regime? I understand that you are probably not an expert on chemical security – and that's fine. But what are your thoughts on the principles that you believe, as a policy matter, should be part of a chemical security regulatory regime?

ANSWER: I support the position previously stated by Secretary Chertoff that in working to close existing gaps and reduce risk across the chemical sector, the Federal Government should adhere to certain core principles. First, we must recognize that not all facilities present the same level of risk, and that the most scrutiny should be focused on those that, if attacked, could endanger the greatest number of lives, have the greatest economic impact or present other very significant risks. There are certainly many chemical facilities in the United States that pose relatively low risk. Second, facility security should be based on reasonable, clear, and equitable performance standards. The Department should develop enforceable performance standards based on the types and severity of potential risks posed by terrorists, and facilities should have the flexibility to select among appropriate site-specific security measures that will effectively address those risks. Third, we should recognize the progress many responsible companies have made to date. Many companies have made significant capital investments in security since 9/11, and we should build on that progress. If confirmed, I look forward to working with Department leadership and with Congress to draft the particulars of the necessary legislation that recognizes these core principles.

Immigration and Border Security

6. Mr. Baker, the Departments of Homeland Security and State have recently published an Advance Notice of Public Rulemaking that invites comments on their plan to implement the Western Hemisphere Travel Initiative. In developing this plan, it is critical that the Department strike the right balance between the need to strengthen our borders, while still maintaining the free flow of legitimate tourism, trade, and other services that are so vital to our border communities. In my home state of Maine, for example, many citizens rely on the ability to quickly and easily cross the border to travel to their jobs, attend church, and visit family and friends. Many Canadians also frequently cross the border into Maine in order to visit family and friends, shop in our stores, dine in our restaurants, and work in our health care facilities in border towns.

For these reasons, I included provisions in the Intelligence Reform Act to ensure that the interests of people living in border communities are taken into account, and that the new travel initiatives seek to expedite the travel of frequent travelers. The Secretary was also given the authority to allow travelers to enter the United States with an alternative document, or a combination of documents, sufficient to denote identity and citizenship. Congressional intent on this matter is clear.

It appears, however, that DHS and State anticipate that very few documents will likely be deemed acceptable in lieu of a passport—many of which, such as the NEXUS card, that are not readily available to all people living on the border.

I am concerned that, if DHS does not allow some convenient and readily-available alternative to passports, whether that is a single document or a combination of documents, legitimate travel will be unnecessarily inhibited.

If confirmed, will you seek to develop a plan that includes readily-available and cost-effective alternatives to passports—including possible combinations of documents—that will meet both the express requirements and the legislative intent of the Intelligence Reform Act?

ANSWER: I agree that a balance must be struck between the need for secure documents that identify those who are crossing the border and the need for flexibility, economy, and convenience for frequent border crossers. Currently, in addition to passports, which are a secure document providing identity and citizenship as required under the Intel Reform Act, the Department anticipates that the Department's NEXUS, SENTRI, FAST and Border Crossing Cards will also serve as suitable alternative documents to establish identity and citizenship. However, I believe that the Department realizes that these options may not be adequate for all individuals you describe in your question. My understanding is that DHS is looking at other options that may be deemed a suitable alternative secure identity documents. The just published Advance Notice of Proposed Rulemaking is the first step in this process, and I look forward to seeing the ideas of those interested parties who provide comments. We know this will be a challenge that we must meet no later than January 1 2008, by which time the WHTDI requirements must be fully implemented under the Intel Reform Act.

7. Mr. Baker, Secretary Chertoff has announced that the Department will create within the new policy office a senior official, or coordinator, for refugee and asylum issues. What do you see as the role and functions of this new position?

ANSWER: Our country has a long history of providing refuge to those being persecuted abroad based on race, religion nationality, membership in a particular social group or political opinion. By announcing the creation of a senior policy officer for asylum and refugee issues, the Department indicated that asylum and refugee issues are key aspects of our immigration policy. If confirmed, I look forward to working with this person to ensure that the Department's policies toward refugees and asylees is consistent with the U.S.'s ongoing leadership in this area.

Transportation and Cargo Security

8. As you know, the Department just submitted the National Strategy for Transportation Security required under the Intelligence Reform and Terrorism Prevention Act of 2004. Unfortunately, the strategy is classified. I would hope the Department intends to issue an unclassified version, so it can be shared with the array of stakeholders responsible for security across different transportation modes. Do you agree that there should be an unclassified version?

ANSWER: It is my understanding that the Department classified the National Strategy for Transportation Security as "Confidential" due to the nature of its contents, including discussion of system vulnerabilities, critical assets and plans related to national security.

It is also my understanding that this document is meant to guide the federal government and its role in securing the transportation system. However, I also understand that the document contains information that might be useful if shared with stakeholders. If confirmed, I will work to ensure that the Department continues its on-going efforts to share information with stakeholders that is necessary to secure the nation's transportation system.

9. Mr. Baker, in your response to written questions, you noted that, while the initial focus on aviation following the attacks of 9/11 was understandable given Congressional direction, it is now "fair to ask whether a different set of priorities should predominate in the future." Can you tell me what your priorities would be in transportation security?

ANSWER: My priorities in transportation security will be guided by the threat-based, risk management approach adopted by Secretary Chertoff. The Federal government must focus resources on the basis of consequence, threat and vulnerability assessment, and the prioritization of risks. This risk-based approach to identify priorities will require interaction and information sharing among and between Federal, State, and local governments, as well as private industry stakeholders, and system users.

10. You have experience with privacy issues and government use of technology. Nowhere is this more public than with the operation of the No Fly List and the Department's fits and starts in implementing a passenger pre-screening system for aviation security.

- (a) How would you approach this task?

ANSWER: It is my understanding that in March, 2004, the Transportation Security Administration (TSA), in coordination with the DHS Privacy Office, established Privacy Principles that every employee is required to follow in the design and development of programs as well as in collecting and using personal information about members of the public for use in those programs. Privacy officers regularly communicate with program offices during the development and implementation of agency programs. Moreover, program offices are required to consult with the TSA Privacy Officer on privacy matters affecting agency programs. If confirmed, I would work to ensure that any program involving screening of passengers would have a solid privacy foundation.

- (b) How do you view the use of commercial data in the operation of Secure Flight and other screening systems?

ANSWER: It is my understanding that commercial data will not be used in the initial phase of Secure Flight, and no decision has yet been made on whether commercial data will ultimately be used in the program. During the initial operational phase, TSA will focus first on implementing a government-run watch list. Then it needs to dramatically cut down on the number of false positives. If using a modest amount of commercial data will help prevent the hassling of many innocent men, women, and children, it is a step that deserves careful consideration.

11. I have been very concerned about the vulnerabilities of the international supply chain, an issue this Committee has been closely examining for a number of years. In addition, we have been awaiting the Administration's release of reports produced under the President's Homeland Security Directive-13 and the Department's cargo security strategy.

- (a) What will your office's role be in cargo security and how would you approach this important issue?

ANSWER: I believe we as a Department have a fundamental responsibility to the American public, our constituency, to develop policies which are effective, forward-leaning, and oriented to encompass both our present needs and future goals. I view my core obligation as supporting the Secretary in the development and implementation of consistent policies and priorities across the Department. As the chief policy officer of the Department, I expect my office to provide a link between Department-wide policy processes and the policy development processes of the Department's components. Our role will be to ensure close and effective coordination of policies at the component and headquarters level to provide unified guidance to the Secretary and the Administration on matters of homeland security.

- (b) CBP's current approach is reliant upon automated targeting systems to identify high-risk shipments and then screen these cargoes. How would you approach the issue of which cargoes to inspect?

ANSWER: I believe that in order to most effectively employ the limited resources of the USG and our foreign partners as well as to secure the economic viability of our system of international commerce we need to be judicious in deciding which containers to direct our inspection resources toward. The decision about what to inspect and in what detail depends on a risk assessment based on intelligence and good judgment. The central task is to identify those containers that are most likely to pose a terrorist or other threat. The higher risk containers should then be subject to physical or other inspections, preferably prior to departure for the United States. That doesn't mean that any particular mix of intelligence-based screening and inspection is the right one; I will certainly examine this question, including the capabilities and functions of ATS, with an open mind and will not hesitate to suggest modifications in the assessment and inspection process.

Privacy, Civil Rights, and Civil Liberties

12. Privacy and civil liberties are at the foundation of this country. Yet, with the threat of terrorism and the challenges of homeland security, some say we have to sacrifice some of our liberties to enhance our security.

- (a) How will you approach balancing homeland security needs with the need to protect privacy and civil liberties?

ANSWER: I firmly believe that the Department's policies must reflect the importance Americans place on protecting our fundamental liberties and privacy. Privacy and security are not mutually inconsistent. Where possible, we should seek policies and technical solutions that improve both security and protections for privacy. Indeed, the mission of DHS is to protect the homeland while ensuring that privacy and civil liberties are protected because privacy and civil liberties are at the core of our freedoms and the very reason that we want to protect this great country. If confirmed, I look forward to working with the DHS Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties to ensure that DHS carries out its mission in ways that protect privacy and our civil liberties.

- (b) How will you incorporate the analysis of potential impacts of proposed policies on civil rights and civil liberties into your policy decision-making?

ANSWER: I believe Secretary Chertoff has repeatedly made clear that the Department must be vigilant in protecting Americans' fundamental liberties and privacy. If confirmed, I would certainly ensure that my office thoroughly reviews the impact of any policy under consideration with respect to privacy, civil right and civil liberties.

13. What role do you see the Privacy and Civil Liberties Oversight Board playing in the Department's policymaking process? How will you make the Privacy and Civil Liberties Oversight Board aware of pending policy decisions within DHS, so that they can fulfill their oversight role?

ANSWER: The Privacy and Civil Liberties Oversight Board is required to ensure that privacy and civil liberties concerns are appropriately considered in the implementation of laws, regulations and executive branch policies related to efforts to protect the nation against terrorism. Because DHS has a statutorily-required Privacy Officer and Officer for Civil Rights and Civil Liberties, I anticipate that the Department will have ongoing interactions with the Privacy and Civil Liberties Oversight Board and I look forward to fostering close coordination between the Department and the Board.

14. Mr. Baker, in your responses to the Committee, you expressed a willingness to review the Privacy Act and make recommendations for any legislative changes you would make, given the rapid evolution of technology and the use of personal data since the enactment of that law more than thirty years ago. Can you provide some thoughts now regarding whether you feel the requirements of the Privacy Act with respect to the use of personal data should be revisited in light of September 11 and the need to protect against terrorism?

ANSWER: The Privacy Act is premised on fair information principles, many of which have stood the test of time well. Nonetheless, I understand that the DHS Privacy Office

recently sponsored a public workshop in which possible revisions to the Privacy Act were discussed. I look forward to working with the DHS Chief Privacy Officer if I am confirmed to hear the results of this workshop and to further refine my thoughts and suggestions on this important legislation.

Information Sharing

15. Among the priorities in waging the war against terrorism, where would you place effective establishment of the Information Sharing Environment (ISE)? What are the key challenges to successfully establishing the ISE?

ANSWER: I believe that effective information sharing is central to waging the war on terrorism. But the ISE is not something that can be created all at once with a single architectural decision. Rather, it will have to be built brick by brick, with a number of small decisions about how to share particular information sets, made in a technical context that encourages future sharing with little in the way of IT barriers. Indeed, I believe a key challenge is to develop trust with the public that DHS will use the information it collects, uses and shares within the Department and with other agencies responsibly. A second key challenge is developing the technology that will support the information sharing environment. This is still a work in progress, but the Department's Enterprise Architecture program will facilitate the ISE within the Department. Interagency information sharing, however, is much more complex and will require that DHS work closely with its information partners at CIA, DOJ, FBI and law enforcement at all levels of government.

16. Creating a successful Information Sharing Environment will require culture change. What types of policies do you anticipate setting to facilitate culture change at DHS?

ANSWER: It is my belief that among other elements we must root out the notion that agencies "own" information. In addition, I believe that we should actively work to promote cooperation while at the same time discouraging efforts to restrict distribution or access to information across agency lines.

**Post-Hearing Questions Submitted by
Senator Norm Coleman
For the Nomination of Stewart A. Baker to be
Assistant Secretary (Policy), Department of Homeland Security
September 15, 2005**

1. Mr. Baker, the Permanent Subcommittee on Investigations, which I am privileged to chair, has extensively examined the two key programs – CSI and C-TPAT – designed to secure our supply chain. We have consistently voiced concerns over these programs, but are encouraged to hear about the department launching a “Secure Freight Initiative.” To date, limited information has been provided about that initiative. Can you tell us what this initiative will entail? How will this initiative impact CSI, C-TPAT, and ATS? Will your office assume a significant role in formulating policy for these programs, which, since their inception, have remained within solely within CBP?

ANSWER: It is my understanding that the Secure Freight Initiative will entail a dynamic approach for engaging the private sector for the collection of additional supply chain data, earlier in the shipping process. I believe this concept will complement the layered approach the Department has charted since its inception and look forward to working with the Secretary, Deputy Secretary and Customs and Border protection to ensure that it is effectively integrated with CSI, C-TPAT, ATS and other programs.

2. Over the past few years, my subcommittee has identified common deficiencies a number of homeland security programs: the policy is often short-sighted; they are poorly coordinated with other agencies both internal and external to the department; and they appear to lack sound strategic planning. That is why I am eager to see the impact your cross-cutting policy office will have on the department and its programs. Can you talk about your previous experience in coordinating and strategically planning such a wide array of programs within one entity and what your policy vision is for the department?

ANSWER: Indeed, I have some private sector and some public sector experience that may be relevant to this effort. For example, a private lawyer, I acted as national coordinating counsel in tort litigation that required taking a strategic view of multiple matters, coordinating strategy in those cases, and bringing forward a variety of motions and theories most likely to bring success in the largest number of cases. In government, I have past experience in coordinating legal strategies and policies with cross-cutting effects, as well as laying out broad options and strategies for transformation of the intelligence community, strategies that have been largely accepted by the Administration. If confirmed, then, I look forward to applying all of these experiences to the challenge ahead.

3. As you know, Secretary Chertoff has strongly advocated risk-based policies and I am curious as to how this approach will be applied to the screening of people and cargo. Several shortcomings in our screening systems were recently highlighted by reports from both the Inspector General’s Office and the GAO. In light of this criticism, what policy

modifications will you offer to improve upon our automated risk assessment and targeting systems?

ANSWER: I certainly believe this is an area that requires a risk-based assessment. For example, with respect to container security, how much additional security would be provided by additional inspections, and at what cost to trade efficiency? The decision about what to inspect and in what detail depends on a risk assessment based on intelligence and good judgment. That doesn't mean that the current mix of intelligence-based screening and inspection is the right one; I will certainly examine this question with an open mind and will not hesitate to suggest modifications in the assessment and inspection process.

4. We were encouraged not only to see the creation of the Domestic Nuclear Detection Office (DNDO) within DHS, but also its placement within the Department as well. We feel that the DNDO will make an indispensable contribution to our counter-nuclear efforts largely by coordinating the policies of the participating agencies to ensure that our detection equipment and techniques are effective at our borders. How do you envision the working relationship between your office and the DNDO?

ANSWER: The DNDO is vitally important; it is aimed at one of the two most troubling terrorist threats we face. It provides a unique opportunity within the Department to provide a centralized planning and implementation nexus for all of the Department's efforts to counter the threat of nuclear terrorism. I expect my office to have a very close working relationship with the DNDO. In the near future I would envision having a direct liaison with DNDO in order to maintain a DHS-wide and interagency focus on the nuclear threat.

**Post-Hearing Questions Submitted by
Senator Pete V. Domenici
For the Nomination of Stewart A. Baker to be
Assistant Secretary (Policy), Department of Homeland Security
September 15, 2005**

1. I have spoken with Secretary Chertoff about the Department's need to share research, capabilities and information so that each directorate, and the Department as a whole, is utilizing the best products, technologies, and skills to secure our homeland. I believe this is being done, as I recently learned that the National Infrastructure Simulation Analysis Center (NISAC), which is run by Sandia and Los Alamos National Laboratories in New Mexico and is a part of the Information Analysis and Infrastructure Protection Directorate, has been working with FEMA to determine the impact of Hurricane Katrina on electric power infrastructure and oil and gas infrastructure.

I believe that such interaction should be encouraged, and in the Office of Policy you will have an opportunity to affect such information sharing because you will be working with

all of the different divisions of DHS and will be responsible for coordinating departmental policies and initiatives.

Have you considered what policies you can implement that will ensure that the Department's various directorates collaborate with each other, academia, industry and federal agencies?

ANSWER: I believe that effective information sharing and collaboration is critical to the mission of the Department. If confirmed, I will work to ensure that the Department continues to leverage the assets and expertise of all DHS entities as well as working with other federal agencies, State and local entities, and the private sector.

2. The Department of Homeland Security is establishing the Domestic Nuclear Detection Office (DNDO) to develop and support the deployment and improvement of a domestic system to detect and report attempts to import, assemble, or transport nuclear explosive devices. The DNDO is to be staffed by DHS, the Department of Energy, the Department of Defense, and the Federal Bureau of Investigation (FBI).

I have taken great interest in this mission, partially because I have long funded the Department of Energy's nuclear detection efforts.

- (a) What policies will you put in place to ensure interagency cooperation in DNDO's efforts?

ANSWER: As a nascent organization, the DNDO will continue to identify additional opportunities for coordination not previously realized. This was, in fact, one of the key reasons for establishing the DNDO. The multitude of nuclear detection programs across the Federal, State, and local levels made it clear that there must be a single strategy to unite all of these previously disparate efforts.

It is my understanding the DNDO has been envisioned, from its inception, as a jointly staffed office, with detailers from the interagency partners you mentioned, as well as the State Department and the Nuclear Regulatory Commission. I also understand that beyond the inherent coordination of this joint staffing approach, the DNDO, as designed, has multiple mechanisms to ensure that interagency cooperation occurs constantly.

- (b) Since so many federal agencies are involved in nuclear detection, how will you ensure that we are not duplicating efforts and creating unnecessary bureaucracy at DNDO?

ANSWER: As has been stated previously, I understand that the DNDO has been given the mission of "centralized planning with decentralized execution, and centralized information sharing and analysis." While the DNDO will not have oversight over other agencies, it will continue to advocate beneficial programs to the Administration, as well as Congress, and identify duplicative or ineffectual programs when necessary, with

proposed improvements.

With regard to unnecessary bureaucracy, rather than providing another level of checks and oversights, slowing government efforts, the DNDOD instead has become a forum for the development of joint proposals, which generally require considerably less vetting and compromise after the initial planning phases.

- (c) Would you consider implementing a policy that requires DNDOD to employ the national laboratories in appropriate roles within DNDOD?

ANSWER: I am told that the DNDOD will certainly work closely with the National Laboratory system in all of its research and development efforts. The National Labs are a unique institution within the Nation's scientific community, and, due to their historical legacies, a nearly unparalleled source of expertise in nuclear countermeasures.

- (d) Would you support a partnership between DNDOD and the Department of Energy's National Nuclear Security Administration for joint funding of common technology bases and exploratory development activities?

ANSWER: I am not sufficiently familiar with the opportunities for joint funding of these activities to have a view. I look forward to studying these questions in more detail if I am confirmed.

- (e) What policies do you plan on implementing to convince foreign governments that it's in their national interest to deploy radiation detection systems at their ports?

- (f) Are there any policies that you can put in place regarding incentives for foreign ports that deploy radiation detection equipment?

- (g) Could we implement some form of the "green lane concept", pursuant to which containers that originate from ports that are equipped with radiation detection systems are processed in U.S. ports on an expedited basis?

ANSWERS (e) (f) (g): It is my understanding that incentivizing overseas screening continues to be a challenge for the Department, particularly with regards to radiation screening. I understand that the DNDOD is playing a major role in the creation of a Global Alliance against Nuclear Terrorism. This alliance is an interagency concept led by the Department of State that seeks to identify the highest priority international opportunities to protect against nuclear terrorism and to develop a joint implementation plan to further the contributions of overseas efforts to the protection of the U.S and key partners.

In addition, I understand that the DNDOD is a strong supporter of providing U.S. funds to deploy radiation screening systems at overseas ports-of-departure, but only if several requirements can be met. Most importantly, any agreement must seek regular information flow from these international sites back into a central information system for

overall continuous awareness. Additionally, we should strive to obtain strict assurances that the equipment is used in a manner that is consistent with U.S. screening standards, and that all alarms are passed along to the U.S. Without at least this level of agreement, the U.S. can have no assurance of any level of effectiveness in this layer of our defensive architecture.

Even if all of these requirements are met, however, substantial obstacles still remain before the implementation of a “green lane concept” may be deemed prudent. With the nuclear threat, the U.S. must have absolute assurance of the effectiveness of previous layers—one “missed” shipment would prove to be catastrophic. Overall, the Department is exploring multiple mechanisms to encourage overseas screening, but it cannot come at the cost of reducing our security elsewhere.

**Post-Hearing Questions Submitted by
Senator Joseph I. Lieberman
For the Nomination of Stewart A. Baker to be
Assistant Secretary (Policy), Department of Homeland Security
September 15, 2005**

Policy Office at DHS

1. DHS needs a policy office to formulate and implement day-to-day policies across the multiple agencies that form DHS and to consider long-term priorities and formulate policies that achieve those priorities over time. What are your immediate and long-term policy priorities and how will you ensure that the long-range priorities do not get set aside in favor of "emergency" policy needs?

ANSWER: I believe the Department of Homeland Security was founded to give the highest priority to securing our Nation from another terrorist attack while also preparing our first responders, our citizens, and our Nation to respond in the event of another such attack. That said, we certainly face other challenges and priorities, from gaining full control of our borders to responding to emergencies like the unprecedented damage done by Hurricane Katrina. In addition, if confirmed, I intend to assist in the aggressive implementation of the priorities established in Secretary Chertoff's Second Stage Review.

Strategy

2. One particular concern of mine is improving our national homeland security strategy. The current strategy was completed in the summer of 2002, before the Department was even created. That document, while perhaps a respectable first start, was vague and lacked clear priorities and deadlines for accountability. I have advocated creating a regular process, modeled after the Quadrennial Defense Review (QDR), to produce a thorough and regularly updated homeland security strategy that can truly guide our homeland efforts. This would include an independent review panel to assess the work of government planners, and provide independent or alternative approaches.

Do you feel DHS could benefit from a strategy process similar to the QDR?

ANSWER: I believe that QDR is rigorous, formal, and a good idea, but that it is also very resource-intensive. I certainly believe it would be a good model for the long run. That said, in the short run, a less formal process may be more cost effective. If confirmed, however, I will undertake a study to see how we can best implement a planning process that obtains the benefit of the QDR in both the short and long run.

Policy Experience

3. What relevant policy experience do you feel that you have and how has that experience prepared you for such a demanding policy position where you will be establishing a new policy office and setting policy that will affect our nation's security?

ANSWER: All of my past government jobs have had a heavy element of policy making, from designing and running the regulation process of a new Education Department to pulling together more than 70 sweeping policy recommendations for intelligence community reform. Similarly, I have long experience creating new institutions, from the Education Department to a nonprofit representing state interests before the Supreme Court, as well as building a law practice from scratch and assembling the team that drafted the WMD commission's report.

Policy Lessons from Hurricane Katrina

4. One of the questions raised by the federal response to Hurricane Katrina is the question of how to balance the traditional missions of the agencies within DHS with their new or expanded responsibilities to combat terrorism. This is a concern that was raised when we created the Department and one that is not unique to FEMA.

(a) How can your office help Secretary Chertoff find and maintain this proper balance?

ANSWER: I believe that the events and aftermath of Katrina show the clear need for dual-purpose preparedness planning. And I agree we need to learn from Katrina lessons that will stand us in good stead both in future natural disasters and in future mass-casualty attacks. If confirmed, then, I anticipate working closely with the Secretary to assess these lessons and to determine how to strike the proper balance.

(b) What tools could your office bring to this fundamental leadership challenge?

ANSWER: I do believe that the policy office can, among other critical elements, offer dispassionate analysis of what went wrong and what the lessons are, what changes in law or policy may be needed.

5. You have indicated that your office will likely be involved with assessing the lessons of Hurricane Katrina with respect to the structure and performance of the Department on emergency preparedness, response and recovery -- whether for a natural disaster or major terror attack. Please elaborate what you think some of the key questions are for the Department in light of the weaknesses that were exposed by the Hurricane Katrina experience. Also, please describe some of the first steps you would take as Assistant Secretary for Policy to assess these issues, and make recommendations for changes.

ANSWER: I believe that the key questions should include what authorities each level of government possessed and used, whether those need to be clarified or revised, how

breakdowns in order contributed to the difficulties in providing aid, how well the plans of all three levels of government worked, the reasons for communications failures during the early days of the crisis, and the like. I'm sure there are many other questions that deserve and will get scrutiny. Assessing these issues will begin by extracting the issues from the facts that have emerged from various perspectives, then analyzing the question of how to avoid problems or build on successes.

**Post-Hearing Questions Submitted by
Senator Carl Levin
For the Nomination of Stewart A. Baker to be
Assistant Secretary (Policy), Department of Homeland Security
September 15, 2005**

Canadian Trash

1. Port Huron, Detroit, and Sault Sainte Marie are three ports in Michigan where trash enters the state. Every month, between 7,000 and 8,000 trash containers enter Michigan through Port Huron--over 200 trash containers every day through that port alone. Customs personnel screening these containers typically use x-ray equipment which does not provide usable information and cannot identify contraband or weapons.
 - (a) To make sure WMD or nuclear material is not hidden inside a trash container, trash containers may be screened first with a radiation portal monitor. If radiation is detected, the cargo is then scanned with a VACIS machine which essentially uses x-ray technology that produces an unreadable image with no useable information. What more should Customs personnel be doing to ensure the security of trash containers?

ANSWER: I agree that the use of technology can only be one aspect of a layered enforcement strategy. Inspectors need to take into account all of the circumstances that may be relevant, such as whether a company participates in an industry partnership program (C-TPAT), intelligence, targeting, non-intrusive inspection technology findings, inspector experience and knowledge, and the like. I understand that, during inspection, many of the same methodologies, technologies, and examination procedures are currently used to detect the presence of chemical, biological, and radiological threats in municipal waste and all other commodities. I gather that you are correct; municipal waste can be challenging to examine (high-density, very non-uniform, no discrete groupings such as boxes or pallets), but I have been assured that it has been, and will continue to be, examined regularly. In addition, penalties are issued and seizures and arrests are made when the importation is found to be in violation of the law, just as is done with other mixed-load commodities. For the future, under the leadership of the Science and Technology Directorate and the Domestic Nuclear Detection Office, DHS is involved in

the development of next generation inspection technology which will improve the ability to detect threats in cargo shipments.

- (b) The supplier of trash is not required to undergo any additional screening, even though it is putting our country at risk unnecessarily. What is your perspective on why is this allowed?

ANSWER: I understand that DHS conducts risks assessments on commercial importations using our Automatic Targeting System. The Automated Targeting System is a rules-based analytical tool that uses cargo information, law enforcement information, and historical data, along with information from the intelligence community, to assess the risk posed by the cargo. I am informed that, if evidence suggests that trash suppliers are engaged in any type of illegal activity that threatens the United States, additional screening would be warranted.

- (c) Some contend that the United States is incurring additional risk for an import we don't need--trash. What is your perspective on this issue?

ANSWER: I appreciate the concern of both State and local governments about the importation of foreign waste into their jurisdictions. In addition to its security mission, DHS also has a role in facilitating lawful commerce. As long as the importation of this commodity complies with the laws of our nation, it is the responsibility of DHS to assure that its importation is not used to create a threat to national security, but otherwise not bar its importation.

- (d) Should DHS develop special screening rules for trash containers?

ANSWER: I understand that some types of commodities are more challenging to inspect than others, and that should be taken into account as part of DHS' risk-based approach for screening these goods, including trash. If confirmed, I will examine this issue and will ask what additional layers of security, if any, are needed; I will also encourage the development of advanced technology to ensure we are able to identify and respond to high risk shipments.

Policy on Border Patrol Arrests and Releases

2. In November 2001, the Permanent Subcommittee on Investigations held a hearing that examined the Border Patrol's practice of arresting aliens who were attempting to illegally enter the country between ports of entry. At the time of our hearing, it was the practice in many border areas, including Michigan, for the Border Patrol to release on recognizance into the United States those aliens who were not voluntarily returned to their home country. In the course of the investigation, it was discovered that many, if not most, of these aliens were released into the United States without any criminal or terrorist background check, and in some cases without a verifiable address or phone number or even a verifiable identity. In many cases, those arrested

were simply given a piece of paper telling them to appear at immigration court for a removal hearing on a date to be determined. Not surprisingly, the Subcommittee was told that a significant percentage of these people never showed up at their hearings.

- (a) The Subcommittee was informed by agents in the field after our 2001 hearing that the policy was changing and that aliens whose identity could not be determined or who had no local connection were being detained, at least in Michigan, pending an immigration hearing. What is the current situation regarding such illegal aliens arrested by Border Patrol?

ANSWER: I am informed that all aliens apprehended by CBP's Office of Border Patrol are checked against terrorist watchlists and screened against criminal databases. For example, the fingerprints (10-prints) of every illegal alien apprehended by CBP's Office of Border Patrol are run against the FBI's Integrated Automated Fingerprint Identification System. In addition, when the Border Patrol encounters an alien believed to present a potential anti-terrorism or national security concern, Border Patrol Agents contact CBP's National Targeting Center for coordination with the Terrorist Screening Center, the Terrorist Threat Integration Center, and Counter-Terrorism Watch. In all such cases, the appropriate Joint Terrorism Task Force is contacted so that an anti-terrorism investigation can be conducted. CBP's Border Patrol also has issued policy guidance emphasizing that an alien from a special interest country or alien with any other potential terrorism nexus is never under any circumstances to be released from custody until all necessary records and database checks have been performed and all necessary investigation has been completed to ensure that the alien poses no terrorism risk.

- (b) For aliens arrested at the border between ports of entry, are criminal and terrorism background checks now being made routinely?

ANSWER: Yes, I am told that all aliens arrested between ports of entry are checked against relevant criminal and terrorism screening databases.

- (c) What should DHS's policy be regarding arresting illegal aliens attempting to enter the United States between ports of entry and releasing them on personal recognizance?

ANSWER: My understanding is that the Department is taking steps to ensure that aliens who unlawfully attempt to enter the country are effectively removed as soon as possible under the law. This includes expanding use of expedited removal, as well as effective screening of all aliens apprehended at the border, and, where detention pending removal is not possible, use of alternatives to detention such as intensive supervision and use of monitoring devices. The Department is committed to the most effective use of immigration authorities and I anticipate the Department will continue to explore best practices to ensure that individuals who are unlawfully in the United States are removed.

Interoperable Communications Equipment

3. It has been reported that during the 9/11 attack the first responders could not communicate well and that lack of effective communication cost lives. The inability of first responders in Louisiana and Mississippi to communicate with one another in the aftermath of Hurricane Katrina underscores again the importance and urgency of this issue.

A June 2004 report by the U.S. Conference of Mayors found that 88 percent of the cities it surveyed do not have interoperable communications capabilities with Department of Homeland Security agencies including FEMA and Customs and Border Protection. In addition, 83 percent of the cities surveyed had interoperable communications problems with the Justice Department. 75 percent reported that they had not received any federal funds for interoperable communications.

Secretary Chertoff, in written answers to questions posed to him prior to his confirmation hearing, stated that he supports the goal of focused spending for interoperable communications equipment.

- (a) Do you support dedicated federal funding to buy interoperable communications equipment for states and localities?

ANSWER: I agree with the Secretary's comments that the grant process can be used to focus state and local emergency planners and first responders on addressing interoperable communications. If confirmed, I look forward to learning more about how best to utilize federal funding in all areas, including interoperability.

- (b) Given your expertise on telecommunications law and technology, how will you approach the challenges of first responder communications interoperability and what will your priorities be in this area?

ANSWER: In my experience, achieving interoperability is sometimes a matter of technical standards, which may require leadership from the Department, and sometimes a matter of breaking organizational logjams, in which some agencies choose one and some another set of equipment, then resist change for bureaucratic or budget reasons. In other cases, it's a matter of organizations clinging to outmoded equipment to avoid new expense. Accordingly, if confirmed, I will closely study the challenges and to adopt an appropriate approach.

**Post-Hearing Questions Submitted by
Senator Daniel K. Akaka
For the Nomination of Stewart A. Baker to be
Assistant Secretary (Policy), Department of Homeland Security
September 15, 2005**

Role of the Office of Policy

1. The Office of International Affairs will be included in the Office of Policy under the Second Stage Review. Currently, the Office of International Affairs does little more than prepare for and advise the Secretary on visits from foreign leaders. When I proposed the idea of a DHS Office of International Affairs during the drafting of the Homeland Security Act, I envisioned an office that would coordinate the international activities of the Department. Currently, 12 different offices in DHS handle international operations. Does this relocation of international affairs to the Office of Policy mean that the Office of International Affairs will actually coordinate international policy for the Department?

ANSWER: Certainly, I believe that expanding the role of OIA would likely take more resources, and, of course, if confirmed, will continue to study expansion of the role and how best to allocate resources. However, I do believe that better coordination of international policy is a high priority, and I expect to expand our capabilities in that effort, without displacing the components' individual capabilities.

2. The Office of Immigration Statistics currently lies within the Management Directorate of DHS. Secretary Chertoff proposed moving this office into the Office of Policy. As a long time advocate of independent and accurate federal statistics, I am concerned that placing the Office of Immigration Statistics in the Policy Office creates a conflict of interest. Statistics should be unbiased and divorced from policymakers. How will you ensure the work of the Office of Immigration Statistics is not compromised in order to support the Department's immigration policy?

ANSWER: As a matter of policy, I agree fully that independent and accurate statistics are essential to establishing performance measures and metrics that must guide DHS policy and planning. Indeed, it is my understanding that one of the most important areas to ensure this independence is in the area of immigration. That said, I believe that by placing the Office of Immigration Statistics within the Office of Policy as a separate component, policymakers will be able to fully utilize the information traditionally generated and ensure ready access to good statistical measures of progress. It is my understanding that in the past this office has often been located in a policy office precisely to encourage policymakers to rely on good data in measuring the effects of their policies.

3. One of the responsibilities of the Office of Policy will be strategic planning, which I believe should be your principal focus. Given the enormous size and breadth of DHS'

responsibilities, the Department needs someone who can provide focus and direction to the mission of preventing and responding to terrorist attacks and natural disasters. Will you please describe what strategic planning work you have done to prepare you for this role?

ANSWER: Indeed, I have some private sector experience in strategic planning that may be relevant to this effort. For example, in my private practice, I acted as national coordinating counsel in tort litigation that required taking a strategic view of multiple cases, coordinating strategy in those cases, and bringing forward a variety of motions and theories most likely to bring success in the largest number of cases. In government, I have past experience in coordinating legal strategies and policies with cross-cutting effects, as well as laying out broad options and strategies for transformation of the intelligence community, strategies that have been largely accepted by the Administration. If confirmed, then, I look forward to applying all of these experiences to the challenge ahead.

Immigration

4. Currently, DHS has three divisions that are responsible for immigration policy: Immigration and Customs Enforcement, Customs and Border Protection, and U.S. Citizenship and Immigration Services. In your answers to pre-hearing questions, you stated that the new Policy Office “will have a central role in assisting the Department’s efforts to speak with one voice concerning immigration policies.” Does this mean you will have the lead on formulating immigration policy?

ANSWER: If confirmed, I intend to work closely with all of the components of DHS to ensure that their operational requirements are taken into careful consideration when formulating overall DHS policy. The component agency policy offices will play an important role both in ensuring that the DHS policy office has clear understanding of these requirements and the affect policies will have on their development, and also in filling in gaps as needed to effectuate the policies enacted by DHS at the component level. I do view the new Policy Office as having a lead role in formulating immigration policy.

Non-Homeland Security Missions

5. I have always believed that preserving the non-homeland security missions of DHS should be a priority for the Department. Do you believe the Office of Policy has a role in ensuring the preservation of the non-homeland security missions of DHS, and if so, how do you intend to do that?

ANSWER: I certainly understand that the Department and its components have numerous traditional missions which are inter-related with its homeland security mission. The Coast Guard’s safety and marine law enforcement mission and FEMA’s assistance to the states and communities following natural disasters are critical functions which the

Department strongly supports. Indeed, the Secretary's reorganization plan proposes refocusing FEMA on its traditional role and elevating it within the Department as a direct report to the Secretary. As the chief policy officer of the Department, I expect my office to provide a link between Department-wide policy processes and the policy development processes of the Department's components and all of their responsibilities. Our role will be to ensure close and effective coordination of policies at the component and headquarters level to provide unified guidance to the Secretary and the Administration on matters of homeland security.

Privacy

6. At my request, Government Accountability Office (GAO) reviewed federal data mining programs and found that there are nearly 200 data mining activities either planned or in use by federal agencies. In general terms, how do you believe data mining technology will be used in future terrorism investigations and what challenges does the use of data mining technology pose?

ANSWER: It is my understanding that modern information technology, including "data mining" can provide faster, more efficient access to information that will enable us to find the next group of terrorists planning attacks inside this country. And, properly used, information technologies that allow us faster, more efficient access to information will also allow us to ensure greater accountability on the part of those who use the data, thus making abuses less likely to occur.

7. At my request, GAO also audited five data mining activities by the federal government that use personal information. While these agencies took many of the key steps to protect personal information, none followed all of the key procedures. The failure of agencies to follow key privacy and security requirements limits the ability of the public to participate in the management of their personal information and risks improper disclosure or alteration of personal data. What do you believe should be done to ensure that agencies are following key privacy and information security laws?

ANSWER: Oversight of the enforcement of federal laws, including privacy and information security laws is, of course, the province of the Congress, and I would support efforts by Congress to exercise its prerogative in this regard. At the Department of Homeland Security, if I am confirmed, I expect to work with the Privacy Officer and the Chief Information Officer, who is primarily responsible for information security, to ensure that DHS programs comply strictly with appropriate privacy and security laws.

8. In response to the Committee's written pre-hearing questions, you mention how "theoretical risks to privacy" have restricted anti-terrorism efforts and that in the past policymakers should have "demanded evidence" that civil liberties or privacy right abuses were occurring, or likely to occur, before setting up such rules. If confirmed as the Assistant Secretary for Policy, what evidence would you require from the DHS Privacy

Officer and the DHS Civil Liberties Officer should issues arise that call for balancing anti-terrorism efforts with privacy and civil liberties?

ANSWER: There is no set standard of proof or evidence in seeking to identify risks to privacy. However, I think it is fair to ask whether measures should be taken to avoid purely theoretical risks to privacy, particularly if those measures will pose real risks to the safety of Americans from terrorism.

9. Much of the concern over data mining activities involves the use of personal information collected from the private sector. What privacy implications do you see with the use of commercial data by the federal government?

ANSWER: There are times when the government needs to have robust access to information resources if it is to enhance national security and the security of its citizens. There are legitimate privacy concerns about commercial data, such as concerns about the integrity of the information, and concerns that information made available to the government for the purpose of protecting against terrorism will be used for other purposes, resulting in "mission creep." These privacy concerns, however, can be mitigated by the establishment of guidelines to regulate access to, use and sharing of private sector data among agencies.

10. In your testimony before the 9-11 Commission, you expressed concern with the debate over the privacy implications with the Terrorism Information Awareness program at the Department of Defense as well as the debate over the privacy implications with the creation of Computer Assisted Passenger Pre-Screening II (CAPPs II) because both programs posed "theoretical risks to privacy." Would you support the use of the Terrorism Information Awareness program and CAPPs II by DHS? What do you think of the current privacy concerns over the testing of Secure Flight? Do you believe the privacy risks posed by Secure Flight are theoretical?

ANSWER: I am not sufficiently familiar with some of these programs to be able to answer this question in detail. For example, the Terrorism Information Awareness program was canceled before it produced concrete results that could be studied. I look forward to learning more about the current privacy concerns over the testing of Secure Flight.

11. As you are aware, the Privacy Act of 1974 places important limitations on what government agencies must do when they choose to collect and utilize information on individuals. Recently, numerous government programs have appeared to do an end-around regarding the Privacy Act, by attempting to access enormous data files held by private data brokers. Thus, the government has effectively outsourced a function to a private company that it could not lawfully accomplish without substantial and important legal protections. Do you endorse DHS' purchase of access to privately compiled data files on individuals, and under what circumstances is such purchase inappropriate? What

privacy implications do you see with the use of commercial data by the federal government?

ANSWER: The Department of Homeland Security should have access to as many tools to accomplish its mission as it needs. It would be short-sighted on our part not to take advantage of information held by the private sector that could enable the agency to protect our country more effectively. At the same time, however, there are ways to structure access to privately-held information to ensure that the government's use of it conforms to privacy and civil liberties concerns. Access to commercial data using a properly designed and implemented system of anonymization, for example, is one way that data can be shared while fully complying with privacy requirements.

12. In the past, you have repeatedly endorsed the government's use of, or purchase of access to, vast amounts of data collected and compiled by so-called "commercial data brokers" or "data aggregators," such as ChoicePoint, Lexis-Nexis and Axiom. Recently, these companies have announced massive data breaches or their mistaken sale of hundreds of thousands of Americans' most-sensitive personally identifiable information to data thieves. For example, ChoicePoint has admitted selling 145,000 Americans' records to identity thieves. What specific actions will you take to ensure that Americans' Privacy Act rights are not lost in such transactions? Do you believe DHS should require such companies to have privacy and security standards before entering into a contract to use their data? If so, what standards and why?

ANSWER: I am reluctant to agree that I have in the past repeatedly endorsed the government's purchase of "vast" amounts of data from private companies. That said, I am aware that data brokers and other companies have suffered significant security breaches that have exposed personally identifiable information. I am not aware that these security breaches have any relationship to the government's purchase of information from these same companies, but I look forward to studying this issue in the future and adopting policies that encourage the security of personal information provided to the Department.

13. I found statements of the Markle Commission Task Force, on which you participated, that recognized the potential threat to civil liberties and personal privacy from the government's use of commercial data brokers' files. Will you commit to building specific privacy and civil liberties protection into DHS' procurement of access to such data files through DHS regulations and contract boilerplate language? And, if so, what specific protections will you require?

ANSWER: As my work on the Markle Commission Task Force demonstrated, I support the establishment of workable rules that allow federal agencies access to the information resources they need to accomplish their missions while also protecting privacy and civil liberties, and I expect to continue to advocate that view if confirmed.

14. I believe that a truly independent Chief Privacy Officer at DHS is critical to protecting Americans' most sensitive personally identifiable information. In response to the Committee's written pre-hearing questions, you said that you see no reason to change the Privacy Officer's current status within the Department. Does this mean that you will not seek to incorporate the Privacy Office into the Policy Office? Do you believe the Privacy Office should be given additional authority to help carry out its mission of protecting the American public's personal privacy?

ANSWER: I understand that by law, the DHS Privacy Officer reports directly to the Secretary of Homeland Security, and I do not anticipate any changes in this relationship.

REAL ID Act

15. I am concerned that the drivers license system mandated by the REAL ID Act could be used to track Americans movements. Unless important safeguards are included, this law could lead to the loss of control of the most-sensitive, personally identifiable information for American drivers. This would be an unacceptable result of this law. I believe that substantial privacy protections must be built into the regulations that DHS will issue pursuant to this Act. Do you anticipate that you will be leading, or otherwise heavily involved in, the development of regulations to instruct states as to how to implement the REAL ID Act?

ANSWER: I anticipate that my office will have a lead role in the development of the policy for any regulations that DHS will promulgate to implement the Real ID Act. As stated earlier, I am committed to privacy and the protection of Americans from terrorism, and I expect those values to be incorporated into the policies adopted under the REAL ID Act.

16. As you know, one of the key issues is whether the new drivers licenses required by DHS will include Radio Frequency Identification Devices (RFIDs), which are contactless chips that contain personal information and emit a signal that, unless encryption is demanded, could allow a terrorist to hold a concealed reader and simply identify every American in a crowd, here or abroad, merely by walking near each of them. This could put innocent Americans in harms' way and make Americans easy targets. What is your opinion on the use of RFID chips as the machine readable component mandated by the Act? If RFID technology is used, will you insist that strong encryption standards accompany any use of RFID?

ANSWER: It is my understanding DHS has made no decisions, at present, as to what technology the regulations will require to satisfy the requirement in the Real ID Act that compliant licenses use a common "machine readable technology." If, after careful consideration, a decision is made to require RFID chips, DHS will seek to do so in a fashion that protects the personal information stored on the RFID chip.

17. Do you believe limits should be in place regarding which state and federal officials will have access to the vast collection of personally identifiable information that states will collect under the Act, so that only those who need access to the information will have access?

ANSWER: I believe that DHS recognizes the concern that the Real ID Act may result in state and federal officials gaining access to the personally identifiable information that States will be required to collect. In addition, I agree that access to the information should be limited to those who have a legitimate need to access the information. At this point, however, it is not certain that any new databases will need to be created to implement the Real ID Act. If confirmed, I look forward to studying this issue as it develops over the next few years.

**Post-Hearing Questions Submitted by
Senator Susan M. Collins
For the Nomination of Julie L. Myers to be
Assistant Secretary (ICE), Department of Homeland Security
September 15, 2005**

General

1. Where do you feel the greatest area of risk lies within ICE's responsibilities?

Answer: DHS was founded to protect America from another terrorist attack and to help our first responders and the communities they serve to respond, assist in and recover from any attacks that may occur. The Secretary has concluded, through his Second Stage Review, that DHS must employ a risk-based analysis to allocating its resources. In other words, we must devote maximal resources to maximal risks. As the Secretary has indicated, this risk analysis is based on three variables: the magnitude of the threat, the magnitude of the vulnerability, and the magnitude of the potential consequences.

In keeping with the Secretary's directions, I plan, if confirmed, to undertake a comprehensive review of ICE's existing strategic plans and operations in terms of how well they accord with threat, vulnerability and consequences, and to ensure that ICE is focusing its resources to address the risk of terrorist attacks based on this assessment. That review will be among my top priorities.

2. There are many critics from both within and without ICE who say that ICE has all but forgotten the traditional missions of its predecessor agencies: immigration and customs enforcement. How do you respond to such criticisms?

Answer: Like any law enforcement agency, and in keeping with Secretary Chertoff's Second Stage Review, ICE must focus its resources on our nation's most significant threats and vulnerabilities. Nevertheless, it is my understanding that ICE has not disregarded or downplayed missions of legacy immigration and customs enforcement; on the contrary, ICE has worked to strengthen the expertise of these two legacy entities. I am informed that in FY 2004, ICE's first full year of operation, it removed a record number of illegal aliens from the United States and that it has similarly achieved unprecedented accomplishments in applying combined law enforcement tools to investigate and dismantle criminal organizations and their financial infrastructure, as well as predators who seek to harm our children. If confirmed, I am eager to work with ICE staff to continue the integration of these functions, and I will ensure that the historic responsibilities of the transferred customs and immigration functions continue to be devoted to targeting the most significant threats to our nation's safety.

Immigration

3. Ms. Myers, in the Committee's written policy questions, you were asked a number of questions about an issue that has been of great concern to many in the manufactured housing industry in Maine. I have been told that some Canadian workers employed in the manufactured housing industry, who are routinely permitted to enter as B-1 visitors, may be engaging in activities that are not a necessary function of delivery and that may, in fact, qualify as construction. If this is the case, then these activities violate our immigration laws and place these workers in direct competition with U.S. workers.

My office has met with Customs and Border Protection (CBP) officials to discuss this issue. As a result of these meetings, CBP officials have not only reached out to their ICE counterparts, but they have also issued new field guidance and subsequently denied entry to some workers. It is inevitable; however, that some of these individuals will manage to get past border officers. Once these workers are admitted, it is difficult for CBP to know which of them is violating our immigration laws. That is why I sent a letter in April to Assistant Secretary Garcia, requesting that ICE review this matter, work with CBP to investigate possible immigration violations, and take appropriate enforcement actions. I recently received a response to my letter. I am told that ICE officials recommended to their CBP counterparts that CBP "conduct a review of some of the entries made in the past to determine if there were any fraudulent entries or inconsistencies noted in the entries. If there were some noted irregularities, the ICE Office of Investigations would then have the ability to initiate an investigation for commercial fraud or related violations of law."

In your response to written questions, you said that you "believe it is important for ICE and CBP to jointly share intelligence and other leads and respond effectively to incidents of mutual concern."

- (a) In light of CBP's and ICE's differing roles—CBP being responsible for controlling and protecting our borders, while ICE is responsible for investigating violations of immigration laws, and enforcing those laws, in the interior of the U.S.—what quantum of intelligence or information could CBP provide that ICE would deem sufficient to open an investigation?

Answer: The intelligence necessary to trigger an investigation invariably depends on the circumstances of the particular case: the type of intelligence shared (e.g., is this information would be admissible in court); the resources available to investigate the case, and other factors, such as the likelihood that the United States Attorney's Office would agree to prosecute the case or whether it is likely that the USAO would decline the case. If confirmed, I will review the matter mentioned above in light of these and other factors.

Speaking more generally, ICE and CBP have a very important and mutually beneficial relationship that is based on ongoing information sharing. Successful information sharing from differing, but complimentary roles has resulted in many significant enforcement

actions. I am informed that most recently, ICE has focused efforts on the Southwest Border and that information leveraged from both agencies has resulted in a substantial number of arrests and seizures.

- (b) Some members of the manufactured housing industry in Maine report that they have also tipped ICE to a number of homebuilding sites where they believed these workers to be working in violation of immigration laws. To their knowledge, ICE has made no visits to any of these sites. The benefits gained by a few such site visits, which would likely have a strong deterrent effect, would likely outweigh the minimal investment of ICE time and resources that such visits would require. Yet no such visit has been made, even after a direct referral by CBP officials. Where do you believe worksite enforcement should fall within ICE's interior enforcement priorities, particularly in cases like this one, where there have already been multiple referrals regarding possible immigration violations?

Answer: I believe that worksite enforcement investigations are an important part of ICE's mission. Although national security and public safety issues must be a top priority for ICE, other worksite enforcement investigations are important as well, especially in light of their deterrent effect. If confirmed, I will look into the particular matter raised in the question.

4. Ms. Myers, earlier this year, the U.S. Commission on International Religious Freedom released a report that examined how expedited removal is affecting asylum seekers. Among the Commission's findings was that, with some exceptions, most asylum-seekers who remain in detention are detained in jails or jail-like facilities. One notable exception, which the study found to be a cost-effective and more humane, but still secure, model, is in Broward County, Florida. The Study also noted that, while ICE now has detention standards, those standards were written with criminal aliens in mind, not asylum-seekers.

How do you respond to the Commission's recommendation that non-criminal asylum seekers who must be detained should be subject to alternatives to detention, or should be held in secure, but non-jail like facilities?

Answer: I understand that DHS is still in the process of reviewing and preparing a comprehensive response to the Commission's recommendations. As indicated previously, if confirmed, I will strive to ensure that all detainees in ICE custody are treated humanely. Particularly with respect to asylum seekers, I will carefully consider the possibility of expanding the use of alternatives to detention and less restrictive detention facilities in appropriate circumstances.

Intelligence

5. Secretary Chertoff's recent proposal to restructure the Department of Homeland Security following his "Second Stage Review" of the Department's programs calls for greater integration of the activities of the Department's various intelligence offices - including the intelligence office of the Bureau of Immigration and Customs Enforcement. To this end, Secretary Chertoff has proposed the creation of a Chief Intelligence Officer for the Department to serve as the Secretary's principal intelligence advisor and to coordinate the work of the Department's intelligence capabilities. What steps will you take to ensure that the intelligence office of the Bureau of Immigration and Customs Enforcement is integrated with the Department's other intelligence capabilities?

Answer: If confirmed, I will ensure that ICE continues to strongly support the Secretary's plan for a Chief Intelligence Officer and to enhance the coordination of the work of the various intelligence components within the Department. It is critical that ICE and other components of the Department effectively share intelligence and respond to incidents of concern. I am informed that ICE intelligence personnel have actively participated in assisting in the development of Department policy regarding the sharing of intelligence, and if confirmed I will make it a priority for the ICE Office of Intelligence to work closely with and support the overall intelligence efforts of the Department.

6. The Intelligence Reform and Terrorism Prevention Act of 2004 created the National Counterterrorism Center with two main responsibilities. First, the National Counterterrorism Center shall - and I quote - "serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism." Second, the Center shall - and I quote - "provide strategic operational plans for the civilian and military counterterrorism efforts of the United States Government and for the effective integration of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States." How will you ensure that the Bureau of Immigration and Customs Enforcement supports the work of the National Counterterrorism Center so that the Center fulfills this legislative mandate of intelligence integration and strategic operational planning?

Answer: If confirmed, I will ensure that ICE, in cooperation with the Department, fully supports the mission of the NCTC. I understand that ICE has detailed a full-time analyst to the NCTC who supports the Center by providing direct and timely access to ICE databases and acts as a conduit for the sharing of law enforcement and intelligence information.

Cargo Security

7. This Committee has been concerned about the possibility of terrorists exploiting the international supply chain to smuggle weapons of mass destruction or terrorist operators into the U.S. We have been closely examining the Department's cargo security programs,

including the Container Security Initiative (CSI). While CSI is a CBP program, CBP relies on the attention of ICE attachés overseas to promote the program and negotiate with foreign governments on establishing CSI ports. Yet, the ICE attachés, in some cases, focus less on CSI than their other “ICE-related” tasks simply because they assumed their parent organization priorities should take precedent. This is a key example of where ICE and CBP resources are intertwined. What will you do to set priorities in light of this potential conflict?

Answer: I am also deeply concerned about the possibility of terrorists exploiting the international supply chain to smuggle weapons of mass destruction or terrorist operators into the U.S. I also understand the Container Security Initiative is a top priority for the Department of Homeland Security and among the most critical components of the President’s National Security Strategy. I had the privilege of working at the Treasury Department at the time that the Customs Service developed this significant initiative. I saw then what potential this initiative had, and I am committed to its success.

Specifically, in response to your question, it is my understanding that ICE Attachés, who are often the only DHS representatives at a Foreign Embassy, provide support to all DHS initiatives. Therefore, although investigations are the primary reason that ICE has Attachés overseas, these Attachés provide support to all DHS initiatives and efforts as needed. ICE has informed me that since the inception of the CSI program, ICE has engaged its Attaché offices worldwide for the startup and operations of the CSI ports. The ICE Attachés work closely with CBP’s CSI division to coordinate and facilitate all facets of CSI from initial negotiations with the host governments to coordination of operational CSI teams. If I am confirmed, I will most certainly ensure that ICE Attachés overseas make CSI a top priority.

Financial Management

8. In recent testimony, the DHS Inspector General stated that ICE “presents the most critical financial reporting challenge for DHS,” and that its financial management problems had reverberated throughout DHS, “consuming large amounts of management time and affecting the accounts of other significant DHS components.” What steps will you take to ensure that these problems are addressed in a timely and significant manner?

Answer: I am very concerned about the financial management difficulties that have affected ICE, and I will make it a high management priority to resolve them. I have already met with the Department’s Chief Financial Officer (CFO), as well as ICE’s acting CFO, and the Inspector General to discuss ICE’s budget status and necessary next steps for the agency. As initial steps toward improvements, if confirmed I will name a permanent CFO for ICE. I then plan on having weekly sessions with the CFO to monitor progress in addressing root causes to ICE’s financial difficulties. I will also work closely with the Department’s CFO and the Inspector General to ensure that ICE is on the right track. In addition, if confirmed I will immediately undertake a comprehensive review of all recent financial management and auditor reports, and associated recommendations, to further determine these root causes. I will then seek to institute “best management” practices that are fully responsive to the recommendations and other financial management issues facing the agency. This is a critical issue to the mission health of this agency and if confirmed I intend to address it promptly.

**Post-Hearing Questions Submitted by
Senator Norm Coleman
For the Nomination of Julie L. Myers to be
Assistant Secretary (ICE), Department of Homeland Security
September 15, 2005**

1. Some within government, including here in Congress, have described ICE as simply the new INS. However, as the largest investigative agency within DHS, the agency also has several national security related responsibilities, particularly with respect to those violations historically enforced by the former U.S. Customs Service. These responsibilities include money laundering and bulk cash smuggling violations that now play a key role in combating terrorist financing. How do you view ICE and where do your priorities lie as far as the primary role and responsibilities of the agency?

Answer: My view is that the primary mission of ICE is to prevent terrorist attacks by preventing exploitation of the customs and immigration system – and by doing so in a manner that promotes confidence in the immigration system and the rule of law. If confirmed, my priorities will be to detect and mitigate national security threats that expose this country to a terrorist attack. These threats, in relationship to ICE's mission, involve the unlawful movement of people, money, and goods.

Building upon my work as Deputy Assistant Secretary for Money Laundering at the Treasury Department, I intend to place particular emphasis on effective use of ICE's financial expertise to ensure that the agency is continuing to aggressively target schemes that terrorist and other criminal organizations use to earn, move and store their illicit funding. In addition, my work at the Commerce Department underscored for me the importance of effective strategic investigations to protect our national security. As such, I will highlight ICE's work in identifying and disrupting organizations and individuals that are illegally trafficking in Weapons of Mass Destruction and their components, including those who illegally obtain and transfer critical technology and arms to restricted or prohibited persons, groups, or nations.

2. While overseeing several homeland security programs, my Subcommittee has repeatedly observed the interdependent relationship that exists between the investigative and inspectional components within law enforcement agencies. More specifically, in the border environment we have seen a symbiotic relationship that exists between those components whereby the operations of each one generates intelligence for use by the other. Do you feel that a separation between those two components, as it currently stands between ICE and CBP, impairs or limits the department's programs and operations at the border?

Answer: It is my considered judgment that robust coordination and intelligence sharing between ICE and CBP is essential along the border. I also agree that successful border control initiatives depend on strong two-way communication between inspectors and investigators as well as improved linkages between border patrol agents and detention

and removal staff. If confirmed, I will work closely with CBP to ensure that information which is shared at our operations is closely coordinated. The Secretary's Second Stage Review has resulted in proposed changes at DHS to ensure better coordination among DHS components, including ICE and CBP. It is my understanding that the new Office of Policy will plan and coordinate immigration policy across all DHS components and that the new Department-wide Operations Office will ensure that policies are translated into action. I agree that the net effect should be an improved and better-coordinated law enforcement response along the border.

5. My Subcommittee is engaged in an oversight investigation into border security that will encompass our ability to expeditiously remove illegal aliens from the United States. We've found that, once ordered removed, a staggering number of them, as high as 85%, have remained at large in our communities as immigration fugitives. Given these statistics, and the obvious national security implications, one can only assume that there is no disincentive for anyone seeking to enter the United States illegally and that the system remains vulnerable to terrorists seeking to enter this country. Since the time of your nomination, have you considered any alternatives to the current system that would make certain those who are ordered removed from this country do in fact get removed? How about any changes that would dissuade those from illegally entering our country between our Ports of Entry?

Answer: I am very concerned about the high absconder rate and the threat that poses to the integrity of our immigration system. If confirmed, I will carefully consider all options to ensure that those ordered removed depart this country. This will include review and possible expansion of the ICE fugitive operations program, greater use of the Intensive Supervision program, and review of our detention priorities and practices. It is my understanding that DHS is already engaged in a comprehensive review of the removal process, and that this review involves not only DHS components that are involved in removal, but also the relevant portions of the Departments of State and Justice. DHS's review has already resulted in the expansion of Expedited Removal across the Southern Border, and I am confident that the review will produce additional changes and proposals to address the absconder problem. If confirmed, I will work closely with CBP and the Department to aggressively implement immigration reform policies with the goal of gaining greater control over our borders and returning the rule of law and integrity to the immigration system.

**Post-Hearing Questions Submitted by
Senator Pete V. Domenici
For the Nomination of Julie L. Myers to be
Assistant Secretary (ICE), Department of Homeland Security
September 15, 2005**

1. This summer I visited Southern New Mexico, which has 172 miles of international border. Much of my visit focused on border issues, including the alarming increase in

illegal immigration activity in New Mexico, destruction of private property by illegal immigrants, and the recent New Mexico minutemen patrols. I believe these vulnerabilities must be addressed in an expedited manner.

- (a) How many ICE agents are currently stationed in New Mexico?

Answer: I am informed by ICE that there are approximately 50 ICE special agents and 11 Deportation and Removal Officers currently stationed in New Mexico.

- (b) Are you aware of any plans to increase that number?

Answer: I am not aware of any current plans to increase those numbers but, if confirmed, I would be happy to review this issue and discuss this with you and your staff.

- (c) In addition to increasing the number of ICE agents stationed in New Mexico, how else can ICE help address vulnerabilities along New Mexico's international border?

Answer: If confirmed, as head of ICE I intend to assure that the issue of addressing border vulnerabilities in cooperation with CBP and other law enforcement agencies will be a top priority for this agency. It is my understanding that DHS is already engaged in a comprehensive review of the removal process, and that this review has recently resulted in expansion of Expedited Removal along the entire Southwest Border, including New Mexico. If confirmed, I will work closely with CBP and the Department to aggressively implement immigration reform policies with the goal of gaining greater control over our borders and returning the rule of law and integrity to the immigration system. I also welcome the chance to work with you and state and local law enforcement officials in New Mexico to find ways to cooperatively address these serious issues.

2. I am a long-time supporter of the use of Unmanned Aerial Vehicles (UAVs) in our border security efforts. My knowledge of and support for these tools stem largely from New Mexico State University's UAV validation and test facility, which is sponsored by the Department of Defense.

- (a) Have you studied the use of UAVs for securing remote areas of our borders?

Answer: I have not yet personally had the opportunity to study the use of UAVs as a tool to be used in securing the border. However, I understand that the Department has studied their use and, if confirmed, I will be happy to dedicate time to studying this issue in cooperation with the Department and CBP.

- (b) Are you amenable to working with the Department of Defense on UAV technology and use?

Answer: I certainly would be happy to work with other DHS components, as well as the Department of Defense, to review both the technology and its use.

(c) What other new technologies might we deploy to help control our borders?

Answer: As yet, I have not personally had the opportunity to study what other technologies might be deployed, but I am very interested in developing mechanisms to use technology to leverage our limited resources. If confirmed, I will certainly be happy to do so in cooperation with CBP and other components in the Department to ensure that DHS has a coordinated and effective strategy to deploy technology to address border vulnerabilities.

3. In 2004, the Department of Homeland Security launched the Arizona Border Control Initiative to achieve operational control of the Arizona border and impair smuggling organizations' abilities. This initiative was put into place because Arizona was the most popular crossing point from Mexico into the U.S.

It is widely acknowledged that when we focus on one segment of the Southern border and decrease the flow of illegal immigration through that State, we increase the flow of illegal immigration into other border States. Thus, to achieve operational control of the border, we must focus on the entire border.

(a) What success has this initiative had in Arizona?

Answer: It is my understanding that the Arizona Border Control Initiative (ABCI) has had tangible success during its first phase and more is expected in the second phase, launched at the end of March 2005. I look forward to seeing the achievements from ICE, who already, in cooperation with Customs and Border Protection on the Arizona Border Control Initiative, has worked to combat violent crime in the Phoenix metropolitan area caused by violent smuggling and trafficking criminal organizations. I am informed that this initiative has achieved significant results, including the prosecution of thousands of criminals for human and drug smuggling, money laundering, weapons violations, hostage taking, and other federal and state violations. The initiative has also yielded numerous seizures of narcotics, weapons, and U.S. currency. As the head of ICE, one of the

primary organizations involved in the Arizona Border Control Initiative, would you work with me to do all that we can to gain control of the entire southern border?

Answer: Absolutely. As Secretary Chertoff has indicated, gaining control over the southern border is one of the Department's top priorities. If I am confirmed, I pledge to work closely with you and all other congressional leaders and other law enforcement agencies to gain effective control of our borders.

(b) Would you consider placing increased assets in New Mexico, similar to those

being deployed in Arizona, to help decrease the flow of illegal immigration and protect our citizens who live along the Southern border?

Answer: As I indicated above, I wholly support the goal of gaining control of our borders, which is a top priority for both ICE and DHS as a whole. That said, as yet I have not had an opportunity to study the issue of the location of ICE's assets but, if confirmed, will quickly do so and would be happy to discuss this issue further with you and your staff.

**Post-Hearing Questions Submitted by
Senator Joseph I. Lieberman
For the Nomination of Julie L. Myers to be
Assistant Secretary (ICE), Department of Homeland Security
September 15, 2005**

Immigration Experience

1. The Bureau of Immigration and Customs Enforcement (ICE) is the federal agency primarily responsible for enforcing immigration law. If confirmed you would be responsible for implementing the complex provisions of the Immigration and Nationality Act regarding apprehension, detention and removal of aliens. Your past jobs have provided you with experience in criminal law, and with civil and criminal enforcement of financial statutes, but it appears that you have much less experience with immigration law.

(a) Do you feel you are sufficiently qualified in immigration law and policy to lead ICE? Please explain.

Answer: Yes, I believe I am sufficiently qualified in several key components which are necessary to implement the provisions of the INA—namely information sharing, law enforcement coordination, supervision of law enforcement agents, and development and implementation of strategic plans to target a specific goal—among others the apprehension, detention and removal of aliens. As I have noted to the Committee as well as in my pre-confirmation questions, I developed these skills through my previous posts at the Departments of Commerce, Justice, and Treasury, and while an Assistant U.S. Attorney. If confirmed, I am also intent on further studying the INA to develop effective expertise. In doing so, I intend to utilize the knowledge and skills of those already at ICE who are immigration law and policy experts to ensure that the steps I take as its leader are fully informed and fully effective.

(b) How will you provide the agency with informed leadership over its immigration enforcement functions?

Answer: If confirmed, I understand that I will be assuming leadership of an agency that is comprised of law enforcement components with long and proud traditions whose shared missions have brought them into one central agency. If confirmed, then, I will seek to

employ my previous experience in law enforcement, which has included working with many different aspects of the ICE agency and its legacy agents, to provide effective, informed, leadership to the ICE agency, its agents and its mission. In addition, my experience in the law enforcement community to date has provided me with excellent working relationships with the law enforcement leadership across the federal government, including within DHS at the DOJ. If confirmed, I intend to fully deploy these relationships and use them to enhance the work of ICE and its partnership with its fellow federal, state, and local law enforcement agencies.

- (c) What steps will you take to ensure that your office contains experienced immigration professionals to help implement your vision?

Answer: If confirmed, as noted above, I intend to call upon the existing skilled and seasoned immigration enforcement agents and personnel to ensure that the vision developed for the future of ICE is one reflective of their goals and experience. I will also work hard to recruit seasoned immigration professionals to add to the ICE core staff. I believe that one of my leadership strengths, developed and reflected in my time at the Departments of Treasury, Justice and Commerce, is the building of consensus in moving forward aggressively and effectively on Administration and agency initiatives. If confirmed, I intend to fully employ this leadership style in order to reach effective results for the agency, the Department, and the nation.

Management Issues

2. What is your approach to management?

Answer: I have been fortunate to work with a number of tremendous leaders and managers, including Secretary Chertoff. My approach to management is framed by my experiences working with them. My approach is to first build a strong management team, with individuals who are experienced, competent and dedicated. Then, I believe it is important to ensure that everyone in the agency knows what the mission of the agency is and what is required in order to be successful. Based on my experience at other agencies, I have found it most effective in law enforcement to build support among the staff for agency and Administration initiatives, and then move forward together. I also believe that it is important to have strong management metrics – what is not measured, often does not get done.

3. What do you see as the principal management challenges facing the next director of the Bureau? How would you confront those challenges?

Answer: I believe ICE faces several key management challenges. First, ICE of course, is still a relatively new agency. There is no question that major accomplishments have already been made toward fully integrating the bureau's workforce. However, more must be done. If confirmed, I will continue these efforts and look for ways to expand them and improve morale and success of mission. As one example, I will seek to develop additional ways to exploit opportunities where customs and immigration investigative authorities intersect.

With respect to financial management challenges, I believe this is a critical issue to the mission health of this agency and if confirmed I intend to address it promptly. As initial steps toward improvements, if confirmed I will name a permanent Chief Financial Officer (CFO) for ICE. I also plan on having weekly sessions with the CFO to monitor progress in addressing the root causes of ICE's financial difficulties. I will also immediately undertake a comprehensive review of all recent financial management and auditor reports, and associated recommendations, to further determine these root causes. I will then seek to institute "best management" practices that are fully responsive to the recommendations and other financial management issues facing the agency.

If confirmed, I also intend to closely study the current effectiveness of ICE to determine how the agency can become more effective in all aspects of its mission. On the investigative side, I will work to ensure effective focus and coordination with CBP. On the detention and removal side, I will work with the Department on the global reengineering of our removal process. In terms of intelligence, I will seek to ensure that we are taking a hard look at ICE's intelligence structure and whether it could be more effective and operational in support of ICE's mission.

4. Section 442(a) (2) of the Homeland Security Act requires the Assistant Secretary for ICE to have a minimum of 5 years of management experience. You have already described your management experience and how you believe it satisfies the statutory requirement in response to pre-hearing written questions from the Committee, and during the Committee hearing. If you wish, please feel free to add to or elaborate upon your earlier answers.

Answer: Given the specific requirement in the Homeland Security Act for the leadership of ICE, I certainly understand and appreciate the Committee's careful analysis of my background and experience. While I would be happy to answer any further questions regarding those topics, or any others regarding my qualifications, I believe that I have fully expressed my belief in my qualifications in the responses to this Committee as well as to both the pre and post-hearing questionnaire. I believe my management experience and law enforcement expertise, developed in leadership roles across three Departments, has demonstrated my capacity to effectively handle management, legal, and financial challenges in federal law enforcement. If confirmed, I look forward to demonstrating with tangible results how these experiences can be deployed in administration of ICE.

ICE Organizational Issues

5. Many analysts, as well as the DHS IG, feel that the Department of Homeland Security has failed to effectively integrate the agencies responsible for border and immigration security. They have pointed to overlap in the missions of U.S. Customs and Border Protection and Immigration and Customs Enforcement, and a lack of clear delineation of responsibilities. They believe that the split of responsibilities between CBP and ICE was done without a compelling reason, and have recommended merging the two organizations. Indeed, a number of employees at ICE believe the existing organization is hampering their work.

(a) Can you describe the pros and cons of merging the two agencies?

Answer: As indicated previously, Secretary Chertoff, as part of his comprehensive Second Stage Review, determined that there are other ways to better ensure that policy, operations, and intelligence are coordinated among DHS components generally, including at CBP and ICE. He therefore decided that it was in the best strategic and operational interest of DHS to allow CBP and ICE to remain as separate organizations. I would expect ICE to continue to work to support the Secretary's vision of DHS operations, policies, and organizational structure. If confirmed, I am committed to working closely with CBP and all other DHS entities to address customs, border, and immigration challenges.

(b) How would you address the concerns of ICE employees, especially former Customs employees, that problems at the agency are limiting their effectiveness?

Answer: If confirmed, I will carefully examine the current management practices within ICE, and as a result of that review, will address these and other concerns that staff may have. I am committed to ensuring that ICE strives for excellence in its operations, administration, and human resource domains.

Detention of Asylum Seekers

6. In February the US Commission on International Religious Freedom released a report documenting poor treatment of asylum seekers by the federal government. Among its findings, the Commission report documented that asylum seekers are detained by in harsh maximum security correctional facilities, and are often housed in the same cellblocks or in the same cells as convicted criminals. The study noted that the ICE detention standards were written with criminal aliens in mind - not asylum seekers. Many of the detainees had been tortured or persecuted in their home countries, and were further traumatized by the conditions of confinement they encountered in the U.S.

(a) Do you think the treatment of asylum seekers, as described in the Commission's report, is compatible with American values?

Answer: I have reviewed the Commission's report and recommendations and appreciate the concerns the Commission has raised with regard to the treatment of asylum seekers. We must do all we can to ensure appropriate treatment for those legitimately fleeing persecution. At the same time, we must be mindful of the fact that some who seek asylum may seek us harm. Regrettably, our asylum system has been abused by terrorists and other criminals, including such notable terrorists as Ramzi Yousef, the mastermind of the 1993 World Trade Center Bombings.

I understand that DHS is in the process of reviewing all of the Commission's recommendations, including those involving the custody conditions of asylum seekers, to determine how to most appropriately respond. It is my understanding that in response to the

findings of the report, Secretary Chertoff has already called for creation of a DHS Senior Officer for Refugee and Asylum Issues. And, if confirmed, I will certainly work closely with the Department to share in the careful attention to this report and any further responses to its recommendations.

- (b) What would you do to improve conditions of confinement for asylum seekers? Do you believe it is possible to develop better alternatives to the jail and prison facilities?

Answer: If confirmed, I will strive to ensure that all detainees in ICE custody, including those who are seeking asylum are maintained in safe, secure, and appropriate conditions of confinement. Particularly with respect to asylum seekers, I will carefully consider the possibility of expanding the use of alternatives to detention and less restrictive detention facilities in appropriate circumstances.

Immigrants and Katrina

7. Tens of thousands of immigrants have been displaced by Hurricane Katrina. According to news reports, many of these immigrants are undocumented, and few have sought relief for which they are eligible. They are afraid they will be turned over to federal authorities for deportation. Even legal immigrants who lost all of their documents in the storm are afraid to seek help. DHS can ensure immigrants receive badly needed assistance by reassuring these storm victims that coming forward will not lead to their deportation. INS Commissioner James Ziglar issued a similar statement after the 9/11 terrorist attacks.

Should DHS reassure storm victims that seeking relief will not lead to their being deported?

Answer: Hurricane Katrina is a terrible tragedy and loss for all who affected. And I believe DHS's first priority should clearly be ensuring the health and safety of all victims, including immigrants, of both the storm and its aftermath. If confirmed, then, I will work with the Department and ensure that ICE applies the appropriate discretion with regard to any victims of this disaster.

**Post-Hearing Questions Submitted by
Senator Carl Levin
For the Nomination of Julie L. Myers to be
Assistant Secretary (ICE), Department of Homeland Security
September 15, 2005**

Department of Justice Criminal Division

You have indicated that you were Deputy Chief of Staff to Assistant Attorney General Michael Chertoff at the Criminal Division of the U.S. Department of Justice (DOJ) from November to December 2002, and his Chief of Staff from December 2002 until September 2003.

(1) FBI Discussions with DOJ Criminal Division Personnel

A May 10, 2004 email released by the Federal Bureau of Investigation (FBI) under a Freedom of Information Act request describes the concerns of FBI agents at Guantanamo Bay regarding Department of Defense (DoD) interrogation techniques. The email states:

“In our [the FBI's] weekly meetings with DOJ we often discussed DoD techniques and how they were not effective or producing Intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parsky (now SES, GS-15 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases. I know Mr. Swartz brought this to the attention of DoD OGC.”

(A) During your tenure at the DOJ Criminal Division, what was your professional relationship to the DOJ personnel named above: Bruce Swartz, David Nahmias, Laura Parsky, and Alice Fisher? Did any of these individuals report to you?

Answer: As Chief of Staff for the Criminal Division, I worked very closely with all of these individuals. At then-Assistant Attorney General Chertoff's direction, I also directly supervised the Office of Administration, which managed the Division's budget and administrative matters. I also served as a surrogate for Assistant Attorney General Chertoff on a number of sensitive matters in the Division, and I worked particularly closely supervising matters, people and issues in the following divisions: Narcotics and Dangerous Drugs; Organized Crime; Counterespionage; Asset Forfeiture and Money Laundering; Computer Crimes and Intellectual Property; Public Integrity; the Office of International Affairs; and Office of Enforcement Operations. In addition, I worked closely with the new Department of Homeland Security, representing the Division in discussions regarding information sharing and other matters, and the Department of Treasury, on terrorist financing issues. Ordinarily, I also reviewed all unclassified matters for the Assistant Attorney General. I had access to some classified matters, particularly with respect to those areas of the Division I mentioned above, but I was not privy to or involved in certain classified matters that came before the Division, particularly those involving the Defense Department.

I had a supervisory role with respect to administrative matters involving David Nahmias, Laura Parsky, and Bruce Swartz, and on other matters, on a case-by-case basis, particularly with respect to the sections named above. I did not have a supervisory role with respect to Alice Fisher, although I worked with her on a number of matters. I generally did not play a supervisory role on counterterrorism matters, other than terrorist financing issues.

- (B) During your DOJ tenure, were you aware of weekly meetings between DOJ Criminal Division personnel and FBI officials which, in part, discussed issues related to interrogations of detainees conducted by Department of Defense (DoD) personnel at Guantanamo Bay?

Answer: I was not aware of meetings between DOJ Criminal Division personnel and FBI officials which discussed issues related to interrogations of detainees conducted by Department of Defense (DOD) personnel at Guantanamo Bay.

- (C) During your DOJ tenure, did you ever hear of FBI agents' concerns, raised with either you or other Criminal Division personnel, regarding the treatment of Guantanamo detainees or relating to DoD interrogation techniques at Guantanamo Bay? If so, what were the circumstances and what was said? What did you do with the information?

Answer: No.

- (D) During your DOJ tenure, did you ever hear of discussions between FBI and DOJ personnel regarding whether DoD interrogation tactics at Guantanamo would be an issue for military commissions? If so, what did you do with the information?

Answer: N

- (E) During your DOJ tenure, did you ever review or become aware of an Electronic Communication dated May 30, 2003, describing FBI agents' concerns regarding the treatment of Guantanamo detainees and DoD interrogation techniques? If so, what did you do with the information?

Answer: No.

- (F) During your DOJ tenure, were you aware that FBI and other DOJ personnel had communicated with Generals Dunlavey and Miller at Guantanamo Bay about interrogation techniques used at the facility, and participated in a videoteleconference with the Pentagon Detainee Policy Committee discussing such interrogation techniques? If so, what were the circumstances and what was said? What did you do with the information?

Answer: No.

- (G) In her response to Questions for the Record (QFRs) posed by the Senate Judiciary Committee, Alice Fisher stated that she recalled discussions about "whether Department of

Defense (DoD) methods were effective in obtaining intelligence." During your DOJ tenure, did you ever discuss with Ms. Fisher or other Criminal Division personnel any disputes or disagreements between FBI and DoD personnel regarding the effectiveness of DoD interrogation techniques? If so, what were you told regarding the nature of the FBI's concerns? What did you do with this information?

Answer: During my DOJ tenure, I was never a participant, nor heard any discussions about the possible use of improper techniques. During my DOJ tenure, I do recall some informal discussions that suggested that some Criminal Division attorneys believed DoD should use more carrots or positive techniques to encourage detainees to talk, and questioned whether DoD had effective questioners. I do not recall hearing, during my tenure, that these were the FBI's concerns as well. These matters were not within the scope of my responsibilities.

- (H) In her responses to QFRs, Ms. Fisher states that in the weekly meetings between FBI and DOJ personnel there were "discussions about preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court." During your DOJ tenure, did Ms. Fisher or other Criminal Division personnel discuss with you any concerns regarding preserving DOJ's ability to prosecute a detainee in an Article III court? What was the nature of these concerns? What did you do with this information?

Answer: I generally recall that, during my DOJ tenure, there were brief informal discussions about the importance of preserving the ability to prosecute a detainee in a criminal proceeding in an Article III court. However, these matters were not within the scope of my responsibilities.

(2) Interrogation of Mohamed al-Kahtani

One of the Guantanamo detainees was Mohamed al-Kahtani, sometimes referred to as Detainee 63. Vice Admiral Church confirmed for the Senate Armed Services Committee that a December 9, 2002 FBI document, which describes DoD's techniques as "coercive," was referring to the military's interview plan for Mr. Kahtani when it states, "You won't believe it!"

- (A) During your DOJ tenure, do you recall discussions with anyone, either within or outside DOJ, about Mr. Kahtani or Detainee 63?

Answer: No.

- (B) During your DOJ tenure, did you become aware of FBI concerns about the interrogation plan for Mr. Kahtani or Detainee 63? If so, what were the circumstances and what was said? Did anyone discuss with you FBI concerns that DoD's interrogation of Kahtani might involve treatment that was abusive, inhumane, or otherwise troubling? If so, what did you do with this information?

Answer: No.

(C) In her responses to QFRs, Ms. Fisher stated that she participated in discussions with the DoD's Office of General Counsel (OGC) regarding "particular detainees housed at Guantanamo Bay" including Mr. Khatani. During your DOJ tenure, were you aware of Ms. Fisher's discussions with the DoD OGC regarding Mr. Khatani? If so, what were the circumstances and what were the nature of her discussions?

Answer: I have no knowledge as to whether or not Ms. Fisher had discussions with DoD OGC regarding Mr. Khatani.

(D) Are you aware of FBI personnel ever discussing with you or anyone in the Criminal Division whether the FBI unit at Guantanamo should disassociate itself from the interrogations of Mr. Khatani?

Answer: No.

(E) During your DOJ tenure, did you become aware of a classified memorandum dated on or around August 1, 2002, prepared by Jay Bybee, then Assistant Attorney General for the Office of Legal Counsel, evaluating the legality of specific interrogation techniques that could be used to question detainees? If so, what were the circumstances and what was said?

Answer: During my DOJ tenure, I had a general awareness that OLC was working on some legal opinions for the Department of Defense, but I did not know about any of the specifics until I saw news reports about the classified memorandum.

(3) Meetings With Defense Department Office of General Counsel

In her answers to QFRs, Ms. Fisher stated that she discussed "some of the FBI's concerns about effectiveness [of DoD interview methods] with members of the Office of General Counsel at the Department of Defense, or was present when such discussions took place."

(A) Did you participate in or were you present for discussions between DOJ Criminal Division personnel and DoD OGC personnel regarding FBI concerns about the effectiveness of DoD interrogation methods?

Answer: No.

If so, please identify:

- A. how many such discussions you participated in or were aware of, and the time period in which such discussions took place;

Answer: See answer to (3)(A).

- B. who else from DOJ was present during these discussions;

Answer: See answer to (3)(A).

- C. who in DoD's OGC was present during these discussions; and

Answer: See answer to (3)(A).

- D. what was the content of those discussions.

Answer: See answer to (3)(A).

(B) Was Assistant Attorney General Chertoff informed of the FBI's concerns regarding the effectiveness of DoD interrogation methods that Ms. Fisher says were raised with the DoD OGC?

Answer: I do not know whether the Assistant Attorney General was informed that concerns stemmed from the FBI. It is my understanding that he was generally aware of the issue concerning the effectiveness of DoD interrogation methods.

(C) Did anyone present during these discussions with the DoD's OGC, in addition to expressing concerns about the "effectiveness" of DOD interrogation techniques, ever express concern that some of the DOD interrogation techniques were abusive, inhumane, or otherwise troubling?

Answer: I was not present at these discussions, and do not know what was discussed.

(4) Discussions with Assistant Attorney General Chertoff

(A) In her QFRs, Ms. Fisher recalls discussing with Assistant Attorney General Chertoff "the effectiveness of the Department of Defense's interview methods, including whether the FBI methods would be more effective in obtaining intelligence." Were you present for or aware of these discussions? Did these discussions include whether the information obtained through DoD interview methods might be of questionable reliability?

Answer: During my DOJ tenure, I believe that I may have been present for at least one very brief, informal discussion with Assistant Attorney General Chertoff and Alice Fisher regarding the effectiveness of DoD's interrogation methods, and whether more carrots or positive encouragement should be used with the detainees. I do not recall that this discussion included a discussion about whether the interview methods might be of questionable reliability.

(B) In discussions with Assistant Attorney General Chertoff, in addition to discussing concerns about the "effectiveness of DOD interview methods," were there discussions regarding FBI concerns that some of the DOD interrogation methods were abusive, inhumane, or otherwise troubling? If so, what were the nature of those discussions?

Answer: During my DOJ tenure, I was not aware of any such discussions involving concerns that DoD interrogation methods were abusive, inhumane or otherwise troubling.

(C) During your DOJ tenure, did you ever discuss issues involving Guantanamo detainees or DoD interrogation techniques with anyone inside or outside the DOJ?

Answer: As noted above, I believe I may have discussed the effectiveness of DoD's interrogation techniques with Ms. Fisher and Assistant Attorney General Chertoff briefly in an informal discussion. In addition, I recall informally discussing with Bruce Swartz and Laura Parsky the need to ensure that detainees were released from Guantanamo as appropriate.

(5) Uniformed Management

During 2002 and 2003, the FBI repeatedly expressed serious concerns with DoD interrogation techniques involving detainees at Guantanamo Bay, communicating these concerns to Guantanamo Bay's military leadership, the DoD Office of General Counsel, the Pentagon Detainee Policy Committee, and senior DOJ Criminal Division personnel, among others. Despite these actions, Mr. Chertoff, Ms. Fisher, and you, the most senior DOJ Criminal Division officials in office at the time, have indicated that you were completely unaware of the FBI's concerns. Please explain how the three most senior DOJ Criminal Division officials, for more than a year, remained completely unaware and uninformed of the significant, ongoing dispute between the FBI and DoD over Guantanamo detainee interrogations?

Answer: The Criminal Division does not supervise the FBI, and FBI concerns are not automatically funneled to individuals within the Criminal Division. To my understanding, FBI concerns would normally be addressed through Bureau channels for response and action.

Associate Independent Counsel

As an Associate Independent Counsel you worked extensively on the report entitled, "Referral from Independent Counsel Kenneth W. Starr In Conformity with the Requirements of Title 28, United States Code, Section 595(c)," which referred to the U.S. House of Representatives information which might constitute grounds for the impeachment of President Clinton. Among other matters, that report stated, in footnote 934, that Monica Lewinsky had told a grand jury that her statement in her affidavit dated January 7, 1998, "I have never had a sexual relationship with the President," was "not true." Did your office ask Ms. Lewinsky whether, at the time she signed the affidavit, she believed that statement in her affidavit to be false? If not, why not? If so, why didn't the report communicate to Congress the information regarding her belief at the time the affidavit was signed?

Answer: I do not recall whether the office asked Ms. Lewinsky whether at the time she signed the affidavit, she believed that statement in her affidavit to be false.

Immigration

In 1994, a provision was added to the Commerce, Justice, State appropriations bill, now known as Section 245(i), that would allow aliens who did not currently have legal status to adjust to legal permanent resident without returning to their home country to do so. This provision was extended until April 30, 2001. There are still timely filed applications pending at the Department of Labor which have not been processed through no fault of the alien. Aliens who have applied under this provision are at risk of deportation even before a resolution of their application can be reached at the Department of Labor. While you stated that ICE, as a general rule, does not deport aliens who have shown that they have a legitimate avenue for relief open to them, it has come to my attention that there are many instances where this general rule has not been followed. I believe that it is incongruous that we offer relief to these individuals and at the same time pursue deportation orders against them.

- A. Do you support developing a policy to ensure that individuals who have good faith applications pending do not get deported until their applications are adjudicated?

Answer: As I indicated previously I have been informed that ICE, as a general rule, does not deport aliens who have demonstrated they have a legitimate avenue for relief open to them. It is my understanding that this is applied on a case-by-case basis and ICE individually evaluates each case to determine whether the alien can show that relief is available to him or her under the law and that there are no negative, offsetting factors. I am told that, if relief is available under the law and no negative factors exist, there are a number of possible steps that can usually be taken to allow an application for relief to be adjudicated. That said, if confirmed I will carefully consider this issue and the need for ICE to issue any additional policy guidance, and I would be happy to have my staff consider any particular case where you believe this rule should be applied.

- B. If so, how would you collaborate with other agencies in order to implement this process?

Answer: Immigration issues cross a number of agencies within DHS and other Departments, such as the Departments of State and Justice. It is my understanding that a particular individual's immigration status and eligibility for relief may be an issue that can affect or cross several of these agencies. If confirmed, accordingly, I will ensure that any policy to be developed in this area is closely coordinated with the other immigration components of DHS and any other relevant Departments.

Money Laundering

You have indicated that you are familiar with anti-money laundering statutes, regulations, and enforcement from your past work as a Deputy Assistant Secretary at the U.S. Treasury Department and as a prosecutor. What is your response to claims that existing federal anti-money laundering laws place overly burdensome requirements on financial institutions and should be eased?

Answer: Based on my experience at Treasury and as a prosecutor, I am aware of much discussion and concern within the financial community regarding the burden and cost of Anti-Money Laundering compliance regimes. Clearly, the requirements imposed by the Bank Secrecy Act and the USA Patriot Act, along with other regulatory and statutory rules, are extensive. However, I believe that any easing of either the Bank Secrecy Act or the USA Patriot Act should be done with extreme caution in light of the major significance of both statutes in curtailing money laundering.

Terrorists and criminal enterprise thrive on weaknesses, loopholes and vulnerabilities. We should, I believe, anticipate that any criminal or terrorist organization will take full advantage of any liberalizations to our laws. At the same time, in my view, we must continually review our requirements to ensure that they remain effective to help prevent money laundering, and we should modify requirements if they are not effective.

I appreciate the leadership that you have had in this area, and if confirmed, will look forward to working with you and your staff on these matters.

**Post-Hearing Questions Submitted by
Senator Daniel K. Akaka
For the Nomination of Julie L. Myers to be
Assistant Secretary (ICE), Department of Homeland Security
September 15, 2005**

Background and Experience

1. I would like to ask you about the important issue of financial management. Immigration and Customs Enforcement (ICE) has been plagued with financial problems since its creation. These problems have resulted in hiring freezes and cuts for employee training, travel, and vehicle maintenance. ICE has maintained operations for the past two years only through a reprogramming request and an emergency supplemental appropriation. In July 2005, Department of Homeland Security (DHS) Inspector General Richard Skinner testified that ICE continues to lose track of several million dollars a month. Can you describe your experiences in managing a complex organization through financial difficulties?

Answer: As Assistant Secretary of Commerce and as Chief of Staff of the Justice Department's Criminal Division I gained experience in managing complex enforcement organizations during certain financial difficulties. For example, while at the Department of Justice, I directly supervised the Office of Administration, which oversaw the Division's budget of, at the time, over \$120 million. During this period, the Division had to do some significant belt-tightening, which included placing some restrictions on travel and other items, in order to ensure that we operated effectively within the resources we were given.

While at the Department of Commerce, I closely managed a budget of \$25 million and implemented effective internal controls for financial and personnel performance measures. At Commerce, due to tight budget circumstances, I had to very closely monitor the spending of each field office. We required each office to submit detailed justifications for their proposed budget, and then reallocated funds based on need and justifications presented. Thanks to close monitoring of this process, despite the budget hardship we operated under, I was pleased that we were able to ensure that all the field offices were able to undertake critical investigative travel, and we were also able to provide deserving hard-working career agents and officials bonuses for their work.

With respect to plans for financial management of ICE in particular, as initial steps toward improvements, if confirmed I will name a permanent Chief Financial Officer (CFO) for ICE. I then plan on having weekly meetings with the CFO to monitor progress in assessing and addressing root causes to ICE's financial difficulties. Further, I will also immediately undertake a comprehensive review of all recent financial management and auditor reports, and associated recommendations. I will also work closely with the Inspector General and Department CFO to ensure that ICE is on the right track. I will then seek to institute "best management" practices that are fully responsive to the recommendations and other financial management issues facing the agency. This is a critical issue to the success of this agency, and if confirmed, I intend to address it promptly.

2. You have indicated that you count your time as an Assistant U.S. Attorney toward the five year management requirement mandated for the Assistant Secretary of ICE in the Homeland Security Act. In that position, how large was the budget you managed and how many staff reported directly to you?

Answer: Like my predecessor, Michael Garcia, I believe that some of my time as a line Assistant United States Attorney is properly counted towards the management requirement. As a line Assistant United States Attorney, I managed particular cases and investigations. The cases ranged in their complexity – some were as simple as a felon in possession of a firearm, but some involved complicated multi-million dollar fraud schemes. For these cases, I had a substantial role in determining what investigative resources a given case merited.

Other than a secretary, I did not supervise staff on a permanent basis, but rather managed agents or more junior prosecutors on particular investigations and with respect to particular investigative decisions.

One example of an investigation I directed is called *Operation Horseback*. This was an OCDETF investigation of an MDMA (ecstasy), heroin and cocaine smuggling ring. I supervised an investigation team that included agents from the then-United States Customs Service and the Drug Enforcement Agency. I represented the United States in the two prosecutions that were brought in *Operation Horseback*, United States v. Ahmed, et al., 00 CR 666 (E.D.N.Y.) and United States v. Sokoli, et al., 01-CR-030 (E.D.N.Y.). All defendants pleaded guilty, and most received substantial prison sentences. I was lead counsel for this Operation and made all the decisions with respect to the direction of the investigation, prosecutions, and plea agreements.

3. According to a May 2005 GAO report, ICE lacks the information technology systems to track alien detainees properly to ensure that custody reviews are timely and in accordance with Supreme Court decisions and regulations. And, according to the DHS Inspector General, "ICE presents the most critical financial reporting challenges for DHS. Its financial management problems have reverberated throughout DHS consuming large amounts of management time and affecting the accounts of other significant DHS components." Will you please describe how your background has prepared you for overseeing the modernization and transformation of an organization's information management systems?

Answer: No question, modernizing and transforming ICE's information management system represents an immense task. Many law enforcement agencies, including the Federal Bureau of Investigation, have struggled to effectively modernize and transform their systems. If confirmed, I would work to ensure that we have first-class experts assigned to reform the agency's information management systems, and I would endeavor to give them the support and resources they need in order to be successful.

With respect to my background, I oversaw the Office of Administration at the Criminal Division while the Division undertook a substantial technology improvement, including upgrading of the network capabilities and systems. Knowing that I was not an expert in information technology, I sought to ensure that the senior executives charged with modernizing the Division's equipment had a clear focus, understood what the leadership expected, and got the support that they needed from the Division's front office. I would seek to apply the same techniques at ICE.

4. According to the Government Accountability Office (GAO), long-standing management problems that plagued the Immigration and Nationalization Service (INS) have continued at ICE. These challenges include a lack of clearly defined priorities and goals and an ineffective use of resources. The transformation efforts of DHS, including ICE, have been designated a GAO high-risk program. GAO has said that to be successful, DHS transformation efforts "must have leaders, managers, and employees who have the individual competencies to integrate and create synergy among the multiple organizations involved in the transformation effort. Leaders need to be held accountable for ensuring results, recognizing when management attention is required and taking corrective action." If confirmed, you will be held accountable for transforming ICE. Please describe your experience in organizational transformation.

Answer: It is my understanding, as well, that there were long-standing management problems at the INS. Moreover, the ongoing challenges with our immigration system only complicate any effort for broad organizational transformation within the ICE.

In preparation for my confirmation hearings and potentially the ICE position, I have had an opportunity to review numerous GAO and Inspector General reports regarding ICE and the need for improvement and change. I have read everything I could find on ICE, and many, many documents relating to the legacy agencies. I have talked to as many individuals as

possible regarding what they see as the way forward for this agency. There is a real challenge here – no question.

With respect to organizational change, I believe the Committee is familiar with the scope of my management experience. I would only note that at the Department of Treasury, I had the ability to participate in the first steps towards moving parts of the Office of Enforcement to the new Department of Homeland Security. I had the ability to see from there what was working, and what was not. Working under Assistant Attorney General Chertoff, I had the opportunity to see first-hand his efforts to transform the Criminal Division into a productive and effective Division with the Department of Justice in a post-9/11 environment. At the Department of Commerce, I worked to help redirect the agency toward the most significant cases and violations, and also help the agency toward a more goal-oriented focus with respect to the year's accomplishments.

A number of individuals have asked me why I would be interested in what they see as a terribly difficult job. I am committed to the ICE mission and bringing this tremendous agency to the next level. If confirmed, what I would bring to the job is this: effective leadership, tremendous energy, strong intellect, the support of the Department, a knowledge of the agency's mission and goals (from a number of different view points), and broad and varied experience. I would also bring strong support from the Department of Justice, which I believe would be helpful in ensuring ICE's long term success.

5. You testified that you supervised investigators at the U.S. Attorney's Office. What was the General Scale (GS) level of this position? Was your position classified as a supervisory position?

Answer: As an Assistant United States Attorney, I directed investigators on particular cases, but I was not a full-time supervisor. Like my predecessor, Michael Garcia, I believe that it is appropriate to include some of this time as a line AUSA toward my management experience time because line AUSA time gives you experience managing investigations and cases. As an Assistant United States Attorney, I was not on the GS-scale. It is my belief that I was on the AD-pay scale.

6. You testified about your experience in immigration enforcement as an Assistant U.S. Attorney. How many immigration cases were you assigned?

Answer: As an AUSA, I worked on immigration cases in various stages and times. All AUSAs in the Eastern District were required to be "the duty assistant" for certain periods. For those times, I would have to draft arrest warrants on simple cases and present those cases for arraignment before a duty magistrate judge. As a duty assistant, I recall drafting a number of arrest warrants for aggravated felony removals, as well as a few false statement on passport cases, or passport fraud cases. In addition, while working in the General Crimes Section of the U.S. Attorney's Office, I prosecuted a number of aggravated felony removal cases, pursuant to 8 U.S.C., section 1326. For these cases, I would present the case to the grand jury and then represent the United States through the sentencing period. I do not recall how many of these cases I presented, but I think a conservative estimate would be at least

five prosecutions. These were very simple cases, and all of my defendants pleaded guilty before trial. I also worked on a couple of more complicated immigration cases, including one case involving a small immigration fraud ring in Brooklyn.

In addition to the cases that had a direct immigration charge, I also dealt with immigration issues on a number of other occasions. In many of my cases, we sought INS detainers on the defendants, either at the time of initial arraignment or at sentencing. I sought and, I believe, we obtained a special visa for a cooperating witness. I had a defendant in a wire fraud case who was here illegally and had said he had claimed asylum when he first entered the U.S. Accordingly, we sought to obtain his A-File and review his records, at the request of the Judge, as well as the relevant statutory provisions governing any application he had for relief. On one occasion, I had a witness that I needed to parole into the United States to testify.

7. How many jury trials did you handle as an Assistant U.S. Attorney?

Answer: I tried four cases to jury verdict as an Assistant U.S. Attorney. I was pleased that I was able to obtain guilty pleas in most of my investigations and prosecutions without having to go to trial. I also represented the United States in several appeals, and numerous other court appearances, such as detention hearings, suppression hearings, and sentencings. I also obtained experience in the grand jury during my time as an Assistant United States Attorney.

8. In response to questions about your management experience, you cited a number of cases that were successfully prosecuted during the time you were Assistant Secretary of Export Enforcement at the Commerce Department. How many of those cases began prior to your arrival at the Commerce Department?

Answer: There is no question that some of the cases that were successfully prosecuted during my time at the Commerce Department began before I arrived. During my tenure, however, we were able to bring to conclusion a number of cases that had languished out there, as well as work to ensure that cases moved through the civil and criminal systems as quickly and expeditiously as possible. In addition, during my tenure, the agents started a number of new cases that have reached settlement or indictment since I have left the agency.

Reorganization of the Department of Homeland Security

9. In July, Secretary Chertoff submitted to Congress a proposed reorganization of DHS. One of the proposed changes is to eliminate the Undersecretary for Border and Transportation Security (BTS). Under current law, the Assistant Secretary for ICE reports to the Undersecretary for BTS. How will the elimination of the Undersecretary of BTS affect the position of Assistant Secretary for ICE? Do you believe this change will give the Assistant Secretary greater authority or managerial discretion?

Answer: I understand the Assistant Secretary of ICE position, as head of an important law enforcement agency, is one with significant authority and managerial discretion, and I am honored to be considered for this post. However, this position, even if the proposed elimination of the Undersecretary occurs, would still be one reporting and responsible to the

Departmental leadership, including the Deputy Secretary and Secretary. Additionally, I recognize the Assistant Secretary of ICE will need to work cooperatively with the head of the new DHS policy office and other Departmental leaders. Accordingly, if confirmed, I will work closely and cooperatively with the other senior leaders within the Department to achieve the Secretary and Deputy Secretary's priorities.

10. Your fiancé, John Wood, currently serves as Secretary Chertoff's Chief of Staff and as Chief of Staff he is responsible for overseeing the Department's policy, planning and operations responsibilities. Secretary Chertoff's proposal to eliminate the Undersecretary of BTS would make the Assistant Secretary for Immigration and Customs Enforcement a direct report to the Secretary and Deputy Secretary. Have you or Mr. Wood received an opinion from the Office of Government Ethics or any other legal office as to whether this would be an apparent or actual conflict of interest? If confirmed, what steps will be taken to eliminate any apparent or actual conflict of interest?

Answer: It is my understanding that the Department's ethics official, Mr. Robert Coyle, has reviewed the Federal conflicts of interests provisions as they apply in cases like ours where husbands and wives work in the same Federal agency. My husband and I both understand, from Mr. Coyle, that we may not be involved personally and substantially in any Government matter that we know would have a direct and predictable personal economic impact on our own or each other's interests. Should I be confirmed, my husband and I will formally recuse ourselves from any such matters.

If confirmed, my husband and I will both be working in the same Department, but neither of us will supervise the other. I will report directly to the Secretary and the Deputy Secretary, and not to the Chief of Staff. As such, Mr. Coyle has determined that there is no conflict presented with respect to any supervisory relationship. I note that this will not be a unique reporting relationship. The heads of the other BTS components, TSA and CBP, also report directly to the Secretary and Deputy Secretary, and not to the Chief of Staff.

Detention of Immigrants

11. If confirmed, you will be accountable for leading 15,000 employees who play a critical role in protecting Americans from terrorist attack. In addition, ICE's Office of Detention and Removal is responsible for managing the detention of approximately 15,000 aliens on any given day. In December 2004, I wrote to former DHS Secretary Ridge about the allegations of abuse of detainees at contract detention facilities and reports that detainees complaints to DHS were being ignored. As we promote freedom and democracy around the world, we cannot deny basic human rights to people we call deportable aliens or unlawful combatants. If confirmed, what will you do to ensure that alien detainees in the custody of ICE are treated in accordance with the rule of law?

Answer: If confirmed, I will strive to maintain safe, secure, and appropriate conditions of confinement for all detained aliens within ICE custody. I understand that the Detention and Removal Operations Office within ICE monitors and assesses detention

operations through the Detention Management and Control Plan. It is my understanding that this plan seeks to improve conditions of confinement and also to provide uniformity of services for all its detainees. If confirmed I will review this plan, and procedures for dealing with complaints with Detention staff, and address any need for improvements.

Personnel

12. The Department has issued final regulations for its new personnel management system. Although the regulations are the subject of a lawsuit and DHS has announced it will delay implementation for a year, it is clear that the Department intends on implementing a pay-for-performance program for its employees. One concern that has been raised with this proposal is how the Department will measure the performance of law enforcement officers without adversely impacting the civil rights of Americans. Although ICE may be able to use best practices developed by other DHS components in implementing their pay-for-performance system, applying a pay-for-performance system to the law enforcement community presents unique challenges. In your opinion, what are appropriate performance measures for law enforcement officers and how can the Department avoid increased violations of privacy and civil liberty abuses under such a reward system?

Answer: It is my understanding that the Department intends to implement a pay for performance program for its employees in three stages, with the first pay for performance being implemented in January 2007. I am told that ICE is currently scheduled to go under the new performance management system in April of 2006, with the pay for performance system being implemented in ICE in January 2009.

I understand the Department has conducted surveys pertaining to competencies of the DHS law enforcement officers to determine what the competencies should be for law enforcement employees and how those employees' performance will be measured. I understand that the other component to be considered in measuring the performance of law enforcement officers is the unit goals. I am told that individual goals will be linked to unit goals, which will be linked to Agency goals. The Department has also held workgroups to validate competencies for employees. Clearly, I am sure the competencies and goals will have no relationship to any activity associated with the abridgement of individual privacy rights or civil liberties. In fact, it would be my considered opinion, that any such abridgements should negatively impact any employee's evaluation and therefore pay, because it goes towards their competencies.

With respect to what would be appropriate performance measures, the individual's goals should be linked ultimately to the Department's strategic goals and combined with competency goals. In this way they can provide a balanced approach towards the effective enforcement of the law and protecting the American public, while at the same time not over-stepping the law.

13. In response the Committee's pre-hearing questions, you stated that in order to respond to the problem of low morale among ICE employees, you will seek to institute "best

management" practices at ICE. Would you please provide details on those best management practices?

Answer: In my experience, both as an employee and as a manager, morale is higher when employees know what is expected of them, they are given the freedom to execute the mission, and they are rewarded for doing so effectively. If confirmed as Assistant Secretary, I would seek to build morale of the workforce in several ways. First, I will be the agency's strongest advocate – within the Department, throughout the Executive Branch, on Capitol Hill and to the Private Sector. The work that the agents do is tremendous, and I will do all I can to advocate on their behalf. Second, I will ensure that the agency knows what its core mission is and what is expected of personnel in order to succeed. From talking to a number of individuals in preparation for my hearings, it has become apparent to me that the agency could improve in this realm. Third, I will work to ensure that the agency employees know that they are being heard at headquarters. Not only will I seek to draw expertise and knowledge from my senior managers in the field, but I will ensure that more junior employees also have a method to share their views. Finally, I have long believed that federal service features too many unsung heroes. Best management practices, in my view, includes ensuring that these unsung heroes are rewarded properly – through methods ranging from a formal award to a simple "thank you."

Whistleblower Protection

14. Ensuring strong whistleblower protections for federal workers is very important to me and other members of this Committee. Such protections are even more critical when whistleblower disclosures impact our national security. As a manager, what do you believe is your role in educating employees of their whistleblower rights and protections?

Answer: I believe in ensuring that employees are fully informed and understand their rights as employees under every applicable area of the law, including the provisions of the Whistleblower Protection Act. I am not yet familiar with the Department's educational activities to date concerning whistleblower rights and protections but, if confirmed, I will certainly ensure that they receive appropriate and effective education.

